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PART-VII

GOVERNMENT OF MEGHALAYA

NOTIFICATIONS

The 19th January, 2017.

No.LL(B).75/2015/79.—The following Acts passed by the Parliament and assented by the President of India and published in the Gazette of India, Extra-Ordinary, Part II, Section I on the date indicated below are hereby republished for general information.

Sl. No.	Name of Act	Act No. & Year	Date of publication in the Gazette of India
3.	The Indian Trusts (Amendment) Act, 2016	34 of 2016	27. 07. 2016
4.	The Child Labour (Prohibition and Regulation) Amendment Act, 2016	35 of 2016	30. 07. 2016
5.	The Lokpal and Lokayuktas (Amendment) Act, 2016	37 of 2016	30. 07. 2016
6.	The Institutes of Technology, (Amendment) Act, 2016	41 of 2016	10. 08. 2016
7.	The National Institutes of Technology, Science Education and Research (Amendment) Act, 2016	42 of 2016	10. 08. 2016
8.	The Benami Transactions (Prohibition) Amendment Act, 2016	43 of 2016	11. 08. 2016
9.	The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016	44 of 2016	16. 08. 2016
10.	The Constitution (One hundred and First Amendment) Act, 2016	—	08. 09. 2016
11.	The Taxation Laws (Amendment) Act, 2016	47 of 2016	08. 09. 2016

THE INDIAN TRUSTS (AMENDMENT) ACT, 2016

An

Act

further to amend the Indian Trusts, Act, 1882.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows :-

1. (1) This Act may be called the Indian Trusts (Amendment) Act, 2016.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2 of 1882.

2. For section 20 of the Indian Trusts Act, 1882 (hereinafter referred to as the principal Act), the following section shall be substituted, namely :-

Substitution of new
section for
section 20.

'20. Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee shall, subject to any direction contained in the instrument of trust, invest the money in any of the securities or class of securities expressly authorised by the instrument of trust or as specified by the Central Government, by notification in the Official Gazette;

Investment of
trust-money.

Provided that where there is a person competent to contract and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment in any of the securities or class of securities mentioned above shall be made without his consent in writing.

Explanation.—For the purposes of this section the expression “securities” shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956.”;

42 of 1956.

Amendment of
section 20A.

3. In section 20A of the principal Act, in sub-section (1), the proviso shall be omitted.

THE CHILD LABOUR (PROHIBITION AND REGULATION)
AMENDMENT ACT, 2016

An

Act

*further to amend the Child Labour (Prohibition and Regulation)
Act, 1986.*

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows :-

1. (1) This Act may be called the Child Labour (Prohibition and Regulation) Amendment Act, 2016.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

61 of 1986.

2. In the Child Labour (Prohibition and Regulation) Act, 1986 (hereinafter referred to as the principal Act), for the long title, the following shall be substituted, namely :—

Amendment of
long title.

“An Act to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto.

Amendment of
short title.

3. In section 1 of the principal Act, in sub-section (1), for the words, brackets and figures “the Child Labour (Prohibition and Regulation) Act, 1986”, the words, brackets and figures “the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986” shall be substituted.

61 of 1986.

Amendment of
section 2.

4. In section 2 of the principal Act,—

(a) clause (i) shall be renumbered as clause (ia) thereof and before clause (ia) as so renumbered, the following clause shall be inserted, namely:—

“(i) “adolescent” means a person who has completed his fourteenth year of age but has not completed his eighteenth year;”;

(b) for clause (ii), the following clause shall be substituted, namely:—

“(ii) “child” means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more;”.

35 of 2009.

Substitution of
new section
for section 3.

5. For section 3 of the principal Act, the following section shall be substituted, namely:—

Prohibition of
employment of
children in any
occupation and
process

“3. (1) No child shall be employed or permitted to work in any occupation or process.

(2) Nothing in sub-section (1) shall apply where the child,—

(a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;

(b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed:

Provided that no such work under this clause shall effect the school education of the child.

Explanation.—For the purposes of this section, the expression,

(a) “family” in relation to a child, means his mother, father, brother, sister and father’s sister and brother and mother’s sister and brother;

(b) “family enterprise” means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons;

(c) “artist” means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of sub-section (2).”.

Insertion of new section 3A.

6. After section 3 of the principal Act, the following section shall be inserted, namely:—

Prohibition of employment of adolescents in certain hazardous occupations and processes.

“3 A. No adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule:

Provided that the Central Government may, by notification, specify the nature of the non-hazardous work to which an adolescent may be permitted to work under this Act.”.

7. In section 4 of the principal Act, for the words “add any occupation or process to the Schedule”, the words “add to, or, omit from, the Schedule any hazardous occupation or process” shall be substituted.

Amendment of section 4.

8. In section 5 of the principal Act,—

Amendment of section 5.

(i) in the marginal heading, for the words “Child Labour Technical Advisory Committee”, the words “Technical Advisory Committee” shall be substituted;

(ii) in sub-section (1), for the words “Child Labour Technical Advisory Committee”, the words “Technical Advisory Committee” shall be substituted.

9. In the heading of Part III of the principal Act, for “CHILDREN” substitute “ADOLESCENTS.”.

Amendment of Part III.

10. In section 6 of the principal Act, for the word and figure “section 3”, the word, figure and letter “section 3A” shall be substituted.

Amendment of section 6.

11. In section 7 of the principal Act, for the word “child”, wherever it occurs, the word “adolescent” shall be substituted.

Amendment of section 7.

12. In section 8 of the principal Act, for the word “child”, the word “adolescent” shall be substituted.

Amendment of section 8.

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| <p>13. In section 9 of the principal Act, for the word “child”, at both the places, where it occurs, the word “adolescent” shall be substituted.</p> | <p>Amendment of section 9.</p> |
| <p>14. In section 10 of the principal Act, for the word “child”, at both the places, where it occurs, the word “adolescent” shall be substituted.</p> | <p>Amendment of section 10.</p> |
| <p>15. In section 11 of the principal Act,—</p> <p style="padding-left: 40px;">(a) for the word “children”, the word “adolescent” shall be substituted.</p> <p style="padding-left: 40px;">(b) for the word “child”, wherever it occurs the word “adolescent” shall be substituted.</p> | <p>Amendment of section 11.</p> |
| <p>16. In section 12 of the principal Act,—</p> <p style="padding-left: 40px;">(a) in the marginal heading, for the words and figures “sections 3 and 14” the words, figures and letter “sections 3A and 14” shall be substituted;</p> <p style="padding-left: 40px;">(b) for the words and figures “sections 3 and 14”, the words, figures and letter “sections 3A and 14” shall be substituted.</p> | <p>Amendment of section 12.</p> |
| <p>17. In section 13 of the principal Act, for the word “children”, wherever it occurs, the word “adolescent” shall be substituted.</p> | <p>Amendment of section 13.</p> |
| <p>18. In section 14 of the principal Act,—</p> <p style="padding-left: 40px;">(a) for sub-section (1), the following sub-sections shall be substituted, namely:—</p> <p style="padding-left: 80px;">“(1) Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both:</p> <p style="padding-left: 80px;">Provided that the parents or guardians of such children shall not be punished unless they permit such child for commercial purposes in contravention of the provisions of section 3.</p> <p style="padding-left: 80px;">(1A) Whoever employs any adolescent or permits any adolescent to work in contravention of the provisions of section 3 A shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both:</p> <p style="padding-left: 80px;">Provided that the parents or guardians of such adolescent shall not be punished unless they permit such adolescent to work in contravention of the provisions of section 3A.</p> <p style="padding-left: 80px;">(1B) Notwithstanding anything contained in sub-sections (1) and (1A) the parents or guardians of any child or adolescent referred to in section 3 or section 3 A, shall not be liable for punishment, in case of the first offence.”.</p> <p style="padding-left: 40px;">(b) for sub-section (2), the following sub-sections shall be substituted, namely:—</p> | <p>Amendment of section 14.</p> |

“(2) Whoever, having been convicted of an offence under section 3 or section 3A commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years.

(2A) Notwithstanding anything contained in sub-section (2), the parents or guardian having been convicted of an offence under section 3 or section 3A, commits a like offence afterwards, he shall be punishable with a fine which may extend to ten thousand rupees.”.

(c) clauses (a), (b) and (c) of sub-section (3) shall be omitted.

Insertion of new sections 14A, 14B, 14C and 14D.

19. After section 14 of the principal Act, the following sections shall be inserted, namely:—

Offences to be Cognizable.

“14A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence committed by an employer and punishable under section 3 or section 3A shall be cognizable.

2 of 1974.

Child and Adolescent Labour Rehabilitation Fund.

14B. (1) The appropriate Government shall constitute a Fund in every district or for two or more districts to be called the Child and Adolescent Labour Rehabilitation Fund to which the amount of the fine realized from the employer of the child and adolescent, within the jurisdiction of such district or districts, shall be credited.

(2) The appropriate Government shall credit an amount of fifteen thousand rupees to the Fund for each child or adolescent for whom the fine amount has been credited under sub-section (1).

(3) The amount credited to the Fund under sub-sections (1) and (2) shall be deposited in such banks or invested in such manner, as the appropriate Government may decide.

(4) The amount deposited or invested, as the case may be under sub-section (3), and the interest accrued on it, shall be paid to the child or adolescent in whose favour such amount is credited, in such manner as may be prescribed.

Explanation.— For the purposes of appropriate Government, the Central Government shall include the Administrator or the Lieutenant Governor of a Union territory under article 239A of the Constitution.

Rehabilitation of rescued child or adolescent.

14C. The child or adolescent, who is employed in contravention of the provisions of this Act and rescued, shall be rehabilitated in accordance with the laws for the time being in force.

Compounding of offences.

14D. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the District Magistrate may, on the application of the accused person, compound any offence committed for the first time by him, under sub-section (3) of section 14 or any offence committed by an accused person being parent or a guardian, in such manner and on payment of such amount to the appropriate Government, as may be prescribed.

2 of 1974.

(2) If the accused fails to pay such amount for composition of the offence, then, the proceedings shall be continued against such person in accordance with the provisions of this Act.

(3) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

(4) Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought in writing, to the notice of the Court in which the prosecution is pending and on the approval of the composition of the offence being given, the person against whom the offence is so compounded, shall be discharged.”.

20. After section 17, the following sections shall be inserted, namely:—

Insertion of new sections 17A and 17B.

“17A. The appropriate Government may confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

District Magistrate to implement the provisions.

17B. The appropriate Government shall make or cause to be made periodic inspection of the places at which the employment of children is prohibited and hazardous occupations or processes are carried out at such intervals as it thinks fit, and monitor the issues, relating to the provisions of this Act.”.

Inspection and monitoring.

21. In section 18 of the principal Act, in sub-section (2),—

Amendment of section 18.

(i) clause (a) shall be relettered as clause (b) thereof and before clause (b), as so relettered, the following clause shall be inserted, namely:—

(a) the conditions and the safety measures under clause (b) of sub-section (2) and other activities under clause (b) to *Explanation of sub-section (2) of section 3*;

(ii) in clause (b), as so relettered, for the words “Child Labour Technical Advisory Committee”, the words “Technical Advisory Committee” shall be substituted.

(iii) clauses (b), (c) and (d) shall be relettered as clauses (c), (d) and (e) thereof and in clause (c) as so relettered, for the word “child”, the word “adolescent” shall be substituted;

(iv) after clause (e), as so relettered, the following clauses shall be inserted, namely:—

“(f) the manner of payment of amount to the child or adolescent under sub-section (4) of section 14B;

(g) the manner of composition of the offence and payment of amount to the appropriate Government under sub-section (1) of section 14D;

(h) the powers to be exercised and the duties to be performed by the officer specified and the local limits within which such powers or duties shall be carried out under section 17A.”.

Substitution of new
Schedule for the
Schedule.

22. In the principal Act, for the Schedule, the following Schedule shall be substituted, namely :—

‘THE SCHEDULE

(See section 3A)

- (1) Mines
- (2) Inflammable substances or explosives.
- (3) Hazardous process.

Explanation.—For the purposes of this Schedule, “hazardous process” has the meaning assigned to it in clause (cb) of the Factories Act, 1948.”

63 of 1948.

**THE LOKPAL AND LOKAYUKTAS
AMENDMENT ACT, 2016**

An

Act

to amend the Lokpal Lokayuktas Act 2013.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows :—

1. (1) This Act may be called the Lokpal Lokayuktas (Amendment) Act, 2016.

Short title and
Commencement.

(2) It shall be deemed to have come into force on the 16th day of January, 2014.

1 of 2014.

2. On and from the date of commencement of the Lokpal and Lokayuktas Act, 2013 (hereinafter referred to as the principal Act), for section 44, the following section shall be substituted, and shall be deemed to have been substituted, namely :—

Amendment of
section 44.

“44 On and from the date of commencement of this Act, every public servant shall make a declaration of his assets and liabilities in such form and manner as may be prescribed.”

Declaration of
assets.

Amendment of
section 59.

3. On and from the date of commencement of the principal Act, in section 59, in sub-section 2, for clause (k) the following clause shall be substituted, and shall be deemed to have been substituted, namely :—

“(k) the form and manner of declaration of assets and liabilities by public servants under section 44:

Provided that the rules may be made under this clause retrospectively from the date on which the provisions of this Act came into force;”

The above Bill has been passed by the Houses of Parliament.

Dated the

Chairman

I assent to this Bill

Dated the

President

THE INSTITUTES OF TECHNOLOGY
(AMENDMENT) ACT, 2016

An

Act

further to amend the Institutes of Technology Act, 1961.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows :-

1. (1) This Act may be called the Institutes of Technology (Amendment) Act, 2016.

Short title and
Commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

59 of 1961.

2. In the Institutes of Technology Act, 1961 (hereinafter referred to as the principal Act), in section 2, for the words and brackets "and the Indian Institute of Technology (Banaras Hindu University), Varanasi", the words and brackets "the Indian Institute of Technology (Banaras Hindu University), Varanasi, the Indian Institute of Technology, Tirupati, the Indian Institute of Technology, Palakkad, the Indian Institute of Technology, Goa the Indian Institute of Technology, Dharwad, the Indian Institute of Technology, Bhilai the Indian Institute of Technology, Jammu and the Indian Institute of Technology (Indian School of Mines), Dhanbad" shall be substituted.

Amendment of
section 2.

Amendment of
section 3.

3. In section 3 of the principal Act,—

(A) in clause (c), after sub-clause (xiii), the following sub-clauses shall be inserted namely:—

“(xiv) in relation to the society known as the Indian Institute of Technology Tirupati, the Indian Institute of Technology, Tirupati;

(xv) in relation to the society known as the Indian Institute of Technology Palakkad, the Indian Institute of Technology, Palakkad;

(xvi) in relation to the society known as the Indian Institute of Technology Goa, the Indian Institute of Technology, Goa;

(xvii) in relation to the society known as the Indian Institute of Technology Dharwar, the Indian Institute of Technology, Dharwad;

(xviii) in relation to the society known as the Indian Institute of Technology Bhilai, the Indian Institute of Technology, Bhilai;

(xix) in relation to the society known as the Indian Institute of Technology Jammu, the Indian Institute of Technology, Jammu;

(xx) in relation to the society known as the Indian School of Mines Dhanbad, the Indian Institute of Technology (Indian School of Mines) Dhanbad.”;

(B) after clause (ga), the following clause shall be inserted, namely:—

“(gb) “Indian School of Mines, Dhanbad” means the society known as Indian School of Mines, Dhanbad;

(C) in clause (j), after sub-clause (xi), the following sub-clauses shall be inserted namely:—

“(xii) the Indian Institute of Technology, Tirupati; (xiii) the Indian Institute of Technology, Palakkad; (xiv) the Indian Institute of Technology, Goa; (xv) the Indian Institute of Technology, Dharwad; (xvi) the Indian Institute of Technology, Bhilai; (xvii) the Indian Institute of Technology, Jammu; (xviii) the Indian School of Mines, Dhanbad;”.

Amendment of
section 4.

4. In section 4 of the principal Act, after sub-section (ID), the following sub-section shall be inserted, namely:—

“(IE) The Indian School of Mines, Dhanbad shall, on such incorporation, be called the Indian Institute of Technology (Indian School of Mines), Dhanbad.”.

Amendment of
section 5.

5. In section 5 of the principal Act, after *Explanation 2*, the following *Explanation* shall be inserted, namely:—

“*Explanation 3*.—The reference in this section to the commencement of this Act shall be construed in relation to the Indian Institute of Technology, Tirupati, Indian Institute of Technology, Palakkad, the Indian Institute of Technology, Goa, Indian Institute of Technology, Dharwad, the Indian Institute of Technology, Bhilai, the Indian Institute of Technology, Jammu, and the Indian Institute of Technology (Indian School of Mines) Dhanbad, as the reference to the date on which the provisions of the Institutes of Technology (Amendment) Act, 2016 comes into force.”.

6. In section 38 of the principal Act,—

Amendment of
section 38.

(i) after clause (o), the following clauses shall be inserted, namely:—

“(p) until the first Statutes and Ordinances in relation to the Indian Institute of Technology, Tirupati, the Indian Institute of Technology, Palakkad, the Indian Institute of Technology, Goa, the Indian Institute of Technology, Dharwad, the Indian Institute of Technology, Bhilai, the Indian Institute of Technology, Jammu, are made under this Act, the Statutes and Ordinances of such Institutes, as in force immediately before the commencement of the Institutes of Technology (Amendment) Act, 2016, shall apply to those Institutes with necessary modifications and adaptations in so far as they are not inconsistent with the provisions of this Act;

(q) the Executive Board, referred to in Rule 7 of the Rules and Regulations of the Indian School of Mines, Dhanbad, functioning as such immediately before the commencement of the Institutes of Technology (Amendment) Act, 2016, shall continue to so function until a new Board is constituted for the Indian Institute of Technology (Indian School of Mines), Dhanbad, under this Act, but on the constitution of a new Board under this Act, the Executive Board of the Indian School of Mines, Dhanbad shall cease to function so far as the Indian Institute of Technology (Indian School of Mines), Dhanbad is concerned;

(r) the Academic Council, referred to in Rule 9 of the Rules and Regulations of the Indian School of Mines, Dhanbad, functioning as such immediately before the commencement of the Institutes of Technology

(Amendment) Act, 2016 shall continue to so function until a new Senate is constituted for the Indian Institute of Technology (Indian School of Mines), Dhanbad under this Act, but on the constitution of a new Senate under this Act, the Academic Council of the Indian School of Mines, Dhanbad shall cease to function so far as the Indian Institute of Technology (Indian School of Mines), Dhanbad;

(s) until the first Statutes and the Ordinances in relation to the Indian Institute of Technology (Indian School of Mines), Dhanbad are made under this Act, the Statutes and Ordinances as are applicable to the Indian Institute of Technology, Roorkee immediately before the commencement of the Institutes of Technology (Amendment) Act, 2016, shall apply to the Indian Institute of Technology (Indian School of Mines), Dhanbad, with the necessary modifications and adaptations in so far as they are not inconsistent with the provisions of this Act;

(t) notwithstanding anything contained in the Institutes of Technology (Amendment) Act, 2016, any student who joined classes of the Indian School of Mines, Dhanbad on or after the commencement of 2015-2016 academic session or completed the courses on or after 2015-2016 academic session shall for the purpose of clause (b) of sub-section (1) of section 6, be deemed to have pursued a course of study in the Indian Institute of Technology (Indian School of Mines), Dhanbad provided that such student has not already been awarded degree or diploma for the same course of study;

(w) if any difficulty arises in giving effect to the provisions of the Institutes of Technology (Amendment) Act, 2016, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this clause after the expiry of two years from the commencement of the Institutes of Technology (Amendment) Act, 2016:

Provided further that every order made under this clause shall be laid, as soon as may be after it is made, before each House of Parliament.”;

(b) After *Explanation 3*, the following Explanation shall be inserted, namely.—

“*Explanation 4.*—The reference in clauses (q), (r) and (s) of this section to the commencement of this Act shall be construed in relation to the Indian Institute of Technology (Indian School of Mines), Dhanbad as the reference to the date on which the provisions of the Institutes of Technology (Amendment) Act, 2016 come into force.”.

THE NATIONAL INSTITUTES OF TECHNOLOGY
SCIENCE EDUCATION AND RESEARCH
(AMENDMENT) ACT, 2016

An

Act

*further to amend the National Institutes of Technology, Science
Education and Research Act, 2007*

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows :-

1. (1) This Act may be called the National Institutes of Technology Science Education and Research Act, 2016.(Amendment) Act, 2016.

Short title and
commencement.

(2) It shall be deemed to have come into force on the 20th day of August, 2015.

Amendment of
First Schedule to
Act 29 of 2007.

2. In the First Schedule to the National Institutes of Technology, Science Education and Research Act, 2007, after serial number 30, the following serial and the entries relating thereto shall be inserted, namely.—

(1)	(2)	(3)
"31	National Institute of Technology, Andhra Pradesh	National Institute of Technology, Andhra Pradesh."

THE BENAMI TRANSACTIONS (PROHIBITION)
AMENDMENT ACT, 2016

An

Act

further to amend the Benami Transaction (Prohibition) Act, 1988.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows :-

1. (1) This Act may be called the Benami Transactions (Prohibition) Amendment Act, 2016.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provisions.

Insertion of new heading before section 1.

2. In the *Benami* Transactions (Prohibition) Act, 1988 (hereinafter referred to as the principal Act), before section 1, the following heading shall be inserted, namely:—

45 of 1988.

“CHAPTER I

PRELIMINARY.”

Amendment of section 1

3. In section 1 of the principal Act, for sub-section (V), the following sub-section shall be substituted, namely:—

“(1) This Act may be called the Prohibition of *Benami* Property Transactions Act, 1988.”.

45 of 1988.

Substitution of new section for section 2.

4. For section 2 of the principal Act, the following section shall be substituted, namely:—

Definitions.

‘2. In this Act, unless the context otherwise requires,—

(1) “Adjudicating Authority” means the Adjudicating Authority appointed under section 7;

(2) “Administrator” means an Income-tax Officer as defined in clause (25) of section 2 of the Income-tax Act, 1961;

(3) “Appellate Tribunal” means the Appellate Tribunal established under section 30;

43 of 1961.

(4) “Approving Authority” means an Additional Commissioner or a Joint Commissioner as defined in clauses (1C) and (28C) respectively of section 2 of the Income-tax Act, 1961;

(5) “attachment” means the prohibition of transfer, conversion, disposition or movement of property, by an order issued under this Act;

43 of 1961.

(6) “authority” means an authority referred to in sub-section (1) of section 18;

(7) “banking company” means a company to which the provisions of the Banking Regulation Act, 1949, applies and includes any bank or banking institution referred to in section 51 of that Act;

10 of 1949.

(8) “*benami* property” means any property which is the subject matter of a *benami* transaction and also includes the proceeds from such property;

(9) “*benami* transaction” means,—

(A) a transaction or an arrangement—

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by—

(i) a *Karta*, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 and any other person as may be notified by the Central Government for this purpose;

22 of 1996.

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint-owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

(B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or

(C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;

(D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;

Explanation.—For the removal of doubts, it is hereby declared that *benami* transaction shall not include any transaction involving the allowing of possession of any property to be taken or retained in part performance of a contract referred to in section 53 A of the Transfer of Property Act, 1882, if, under any law for the time being in force.—

4 of 1882.

(i) consideration for such property has been provided by the person to whom possession of property has been allowed but the person who * has granted possession thereof continues to hold ownership of such property;

(ii) stamp duty on such transaction or arrangement has been paid; and -

(iii) the contract has been registered.

(10) "*benamidar*" means a person or a fictitious person, as the case may be, in whose name the *benami* property is transferred or held and includes a person who lends his name;

(11) "Bench" means a Bench of the Adjudicating Authority or the Appellate Tribunal, as the case may be;

(12) "beneficial owner" means a person, whether his identity is known or not, for whose benefit the *benami* property is held by a *benamidar*,

54 of 1963.. (13) "Board" means the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963;

18 of 2013. (14) "director" shall have the same meaning as assigned to it in clause (34) of section 2 of the Companies Act, 2013;

39 of 1925. (15) "executor" shall have the same meaning as assigned to it in clause (c) of section 2 of the Indian Succession Act, 1925;

(16) "fair market value", in relation to a property, means—

(i) the price that the property would ordinarily fetch on sale in the open market on the date of the transaction; and

(ii) where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with such manner as may be prescribed;

9 of 1932. (17) "firm" shall have the same meaning as assigned to it in section 4 of the Indian Partnership Act, 1932 and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008;
6 of 2009.

(18) "High Court" means—

(i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(ii) where the Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain;

(19) "Initiating Officer" means an Assistant Commissioner or a Deputy Commissioner as defined in clauses (9A) and (19A) respectively of section 2 of the Income-tax Act, 1961;

43 of 1961.

(20) "Member" means the Chairperson or the Member of the Adjudicating Authority or the Appellate Tribunal, as the case may be;

(21) "notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;

(22) "partner" shall have the same meaning as assigned to it in section 4 of the Indian Partnership Act, 1932, and shall include,—

9 of 1932.

(a) any person who, being a minor, has been admitted to the benefits of partnership; and

(b) a partner of a limited liability partnership formed and registered under the Limited Liability Partnership Act, 2008;

6 of 2009.

(23) "partnership" shall have the same meaning as assigned to it in section 4 of the Indian Partnership Act, 1932, and shall include a limited liability partnership formed and registered under the Limited Liability Partnership Act, 2008;

9 of 1932.

6 of 2009.

(24) "person" shall include—

(i) an individual;

(ii) a Hindu undivided family;

(iii) a company;

(iv) a firm;

(v) an association of persons or a body of individuals, whether incorporated or not;

(vi) every artificial juridical person, not falling under sub-clauses (i) to (v);

(25) "prescribed" means prescribed by rules made under this Act;

(26) "property" means assets of any kind, whether movable or immovable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal documents or instruments evidencing title to or interest in the property and where the property is capable of conversion into some other form, then the property in the converted form and also includes the proceeds from the property;

(27) "public financial institution" shall have the same meaning as assigned to it in clause (72) of section 2 of the Companies Act, 2013;

18 of 2013.

(28) "Special Court" means a Court of Session designated as Special Court under sub-section (1) of section 50;

(29) "transfer" includes sale, purchase or any other form of transfer of right, title, possession or lien;

(30) "trustee" means the trustee as defined in the section 3 of the Indian Trusts Act, 1882;

2 of 1882.

(31) words and expressions used herein and not defined in this Act but defined in the Indian Trusts Act, 1882, the Indian Succession Act, 1925, the Indian Partnership Act, 1932, the Income-tax Act, 1961, the Depositories Act, 1996, the Prevention of Money-Laundering Act, 2002, the Limited Liability Partnership Act, 2008 and the Companies Act, 2013, shall have the same meanings respectively assigned to them in those Acts.'

2 of 1882.
39 of 1925
9 of 1932.
43 of 1961.
22 of 1996.
15 of 2003.
6 of 2009.
18 of 2015.

5. Before section 3 of the principal Act, the following heading shall be inserted, namely:—

Insertion of new heading before section 3.

“CHAPTER II

PROHIBITION OF BENAMI TRANSACTIONS”

6. In section 3 of the principal Act,—

Amendment of section 3.

(a) sub-section (2) shall be omitted;

(b) sub-section (3) shall be renumbered as sub-section (2) thereof;

(c) after sub-section (2) as so renumbered, the following sub-section shall be inserted, namely:—

“(3) Whoever enters into any *benami* transaction on and after the date of commencement of the *Benami* Transactions (Prohibition) Amendment Act, 2016, shall, notwithstanding anything contained in sub-section (2), be punishable in accordance with the provisions contained in Chapter VII.”;

(d) sub-section (4) shall be omitted.

7. In section 4 of the principal Act, sub-section (3) shall be omitted.

Amendment of section 4.

8. For sections 5 and 6 of the principal Act, the following sections shall be substituted, namely:—

Substitution of new sections for section 5 and 6.

“5. Any property, which is subject matter of *benami* transaction, shall be liable to be confiscated by the Central Government.

Property held *benami* liable to confiscation.

6. (1) No person, being a *benamidar* shall re-transfer the *benami* property held by him to the beneficial owner or any other person acting on his behalf.

Prohibition on re-transfer of property by *benamider*.

(2) Where any property is re-transferred in contravention of the provisions of sub-section (1), the transaction of such property shall be deemed to be null and void.

(3) The provisions of sub-sections (1) and (2) shall not apply to a transfer made in accordance with the provisions of section 190 of the Finance Act, 2016.”.

28 of 2016.

9. After section 6 of the principal Act, the following shall be inserted, namely:—

Insertion of new Chapters III to V.”II”

CHAPTER III

AUTHORITIES

7. The Central Government shall, by notification, appoint one or more Adjudicating Authorities to exercise jurisdiction, powers and authority conferred by or under this Act.

Adjudicating Authority.

8. An Adjudicating Authority shall consist of a Chairperson and at least two other Members.

Composition of Authority

9. (1) A person shall not be qualified for appointment as the Chairperson or a Member of the Adjudicating Authority unless he,—

Qualifications for appointment of Chairperson and Members.

(a) has been a member of the Indian Revenue Service and has held the post of Commissioner of Income-tax or equivalent post in that Service; or

(b) has been a member of the Indian Legal Service and has held the post of Joint Secretary or equivalent post in that Service.

(2) The Chairperson and other Members of the Adjudicating Authority shall be appointed by the Central Government in such manner as may be prescribed.

(3) The Central Government shall appoint the senior most Member to be the Chairperson of the Adjudicating Authority.

Constitution of
Benches of
Adjudicating
Authority.

10. (1) Subject to the provisions of this Act,—

(a) the jurisdiction of the Adjudicating Authority may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson of the Adjudicating Authority with two Members, as the Chairperson may deem fit;

(c) the Benches of the Adjudicating Authority shall ordinarily sit in the National Capital Territory of Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify;

(d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Adjudicating Authority may exercise jurisdiction.

(2) Notwithstanding anything contained in sub-section (1), the Chairperson may transfer a Member from one Bench to another Bench.

Power of Adjudicat-
ing Authority to
regulate its own
procedure.

11. The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Authority shall have powers to regulate its own procedure.

5 of 1908

Term of office of
Chairperson and
Members of
Adjudicating
Authority.

12. The Chairperson and Members of the Adjudicating Authority shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty-two years, whichever is earlier and shall not be eligible for reappointment.

Terms and
conditions of
services of
Chairperson and
Members of
Adjudicating
Authority.

13. (1) The salary and allowances payable to, and the other terms and conditions of service of the Chairperson and other Members of the Adjudicating Authority shall be such as may be prescribed.

(2) Any vacancy caused to the office of the Chairperson or any other Member shall be filled up within a period of three months from the date on which such vacancy occurs.

Removal of
Chairperson and
Members of
Adjudicating
Authority.

14. (1) The Central Government may, by order, remove from office, the Chairperson or other Members of the Adjudicating Authority, if the Chairperson or such other Member, as the case may be,—

(a) has been adjudged as an insolvent; or

(b) has been convicted of an offence, involving moral turpitude;
or

(c) has become physically or mentally incapable of acting as a Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or

(e) has so abused his position as to render his continuance in office is prejudicial to the public interest.

(2) No Chairperson or Member shall be removed from his office under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

Members to act as Chairperson in certain circumstances.

15. (1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior most Member shall act as the Chairperson of the Adjudicating Authority until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

16. No act or proceeding of the Adjudicating Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of the Authority; or

(b) any defect in the appointment of a person acting as a Member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

17. (1) The Central Government shall provide each Adjudicating Authority with such officers and employees as that Government may think fit.

(2) The officers and employees of the Adjudicating Authority shall discharge their functions under the general superintendence of the Chairperson of the Adjudicating Authority.

18. (1) The following shall be the authorities for the purposes of this Act, namely:—

- (a) the Initiating Officer;
- (b) the Approving Authority;
- (c) the Administrator; and
- (d) the Adjudicating Authority.

Vacancies, etc, not to invalidate proceedings of Adjudicating Authority

Officers and employees of Adjudicating Authority.

Authorities and jurisdiction.

(2) The authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to it under this Act or in accordance with such rules as may be prescribed.

5 of 1908

19. (1) The authorities shall, for the purposes of this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

Powers of authorities.

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any official of a banking company or a public financial institution or any other intermediary or reporting entity, and examining him on oath;

(c) compelling the production of books of account and other documents;

(d) issuing commissions;

(e) receiving evidence on affidavits; and

(f) any other matter which may be prescribed.

(2) All the persons summoned under sub-section (1) shall be bound to attend in person or through authorised agents, as any authority under this Act may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

45 of 1860.

(3) Every proceeding under sub-section (1) or sub-section (2) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code.

(4) For the purposes of this Act, any authority under this Act may requisition the service of any police officer or of any officer of the Central Government or State Government or of both to assist him for all or any of the purposes specified in sub-section (1), and it shall be the duty of every such officer to comply with the requisition or direction.

(5) For the purposes of this section, “reporting entity” means any intermediary or any authority or of the Central or the State Government or any other person as may be notified in this behalf.

Explanation.—For the purposes of sub-section (5), “intermediary” shall have the same meaning as assigned to it in clause (n) of sub-section (1) of section 2 of the Prevention of Money-Laundering Act, 2002.

15 of 2003.

Certain officers to assist in inquiry, etc.

20. The following officers shall assist the authorities in the enforcement of this Act, namely:—

(a) income-tax authorities appointed under sub-section (1) of section 117 of the Income-tax Act, 1961;

43 of 1961.

(b) officers of the Customs and Central Excise Departments;

(c) officers appointed under sub-section (1) of section 5 of the Narcotic Drugs and Psychotropic Substances Act, 1985;

61 of 1985.

(d) officers of the stock exchange recognised under section 4 of the Securities Contracts (Regulation) Act, 1956;

42 of 1956.

- (e) officers of the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934; 2 of 1934..
- (f) police;
- (g) officers of enforcement appointed under sub-section (1) of section 36 of the Foreign Exchange Management Act, 1999; 40 of 1999.
- (h) officers of the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992; 15 of 1992.
- (i) officers of any other body corporate constituted or established under a Central or a State Act; and
- (j) such other officers of the Central Government, State Government, local authorities or banking companies as the Central Government may, by notification, specify, in this behalf.

Power to call for information.

21. (1) The Initiating Officer or the Approving Authority or the Adjudicating Authority shall have power to require any officer of the Central Government or State Government or a local body or any person or officer who is responsible for registering and maintaining books of account or other documents containing a record of any transaction relating to any property or any other person to furnish any information in relation to any person, point or matter as in his opinion shall be useful for or relevant for the purposes of this Act.

(2) Without prejudice to sub-section (1), every officer or person referred to in sub-section (1) shall furnish such information to any authority under this Act in such form and manner as may be prescribed.

Power of authority to impound documents.

22. (1) Where any books of account or other documents are produced before the authority in any proceedings under this Act and the authority in this behalf has reason to believe that any of the books of account or other documents are required to be impounded and retained for any inquiry under this Act, it may impound and retain the books of account or other documents for a period not exceeding three months from the date of order of attachment made by the Adjudicating Authority under sub-section (3) of section 26:

Provided that the period for retention of the books of account or other documents may be extended beyond a period exceeding three months from the date of order of attachment made by the Adjudicating Authority under sub-section (3) of section 26 where the authority records in writing the reasons for extending the same.

(2) Where the authority impounding and retaining the books of account or other documents, under sub-section (1) is the Initiating Officer, he shall obtain approval of the Approving Authority within a period of fifteen days from the date of initial impounding and seek further approval of the Approving Authority for extending the period of initial retention, before the expiry of the period of initial retention, if so required.

(3) The period of retention of the books of account or other documents under sub-section (1) shall in no case exceed a period of thirty days from the date of conclusion of all the proceedings under this Act.

(4) The person, from whom the books of account or other documents were impounded under sub-section (1), shall be entitled to obtain copies thereof.

(5) On the expiry of the period specified under sub-section (1), the books of account or other documents shall be returned to the person from whom such books of account or other documents were impounded unless the Approving Authority or the Adjudicating Authority permits their release to any other person.

23. The Initiating Officer, after obtaining prior approval of the Approving Authority, shall have power to conduct or cause to be conducted any inquiry or investigation in respect of any person, place, property, assets, documents, books of account or other documents, in respect of any other relevant matters under this Act.

Power of authority to conduct inquiry, etc.

CHAPTER IV

ATTACHMENT, ADJUDICATION AND CONFISCATION

24. (1) Where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person is a *benamidar* in respect of a property, he may, after recording reasons in writing, issue a notice to the person to show cause within such time as may be specified in the notice why the property should not be treated as *benami* property.

Notice and attachment of property involved in *benami* transaction.

(2) Where a notice under sub-section (1) specifies any property as being held by a *benamidar* referred to in that sub-section, a copy of the notice shall also be issued to the beneficial owner if his identity is known.

(3) Where the Initiating Officer is of the opinion that the person in possession of the property held *benami* may alienate the property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally the property in the manner as may be prescribed, for a period not exceeding ninety days from the date of issue of notice under sub-section (1).

(4) The Initiating Officer, after making such inquiries and calling for such reports or evidence as he deems fit and taking into account all relevant materials, shall, within a period of ninety days from the date of issue of notice under sub-section (1),—

(a) where the provisional attachment has been made under sub-section (3), —

(i) pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or

(ii) revoke the provisional attachment of the property with the prior approval of the Approving Authority;

(b) where provisional attachment has not been made under sub-section (3),—

(i) pass an order provisionally attaching the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or

(ii) decide not to attach the property as specified in the notice, with the prior approval of the Approving Authority.

(5) Where the Initiating Officer passes an order continuing the provisional attachment of the property under sub-clause (i) of clause (a) of sub-section (4) or passes an order provisionally attaching the property under sub-clause (i) of clause (b) of that sub-section, he shall, within fifteen days from the date of the attachment, draw up a statement of the case and refer it to the Adjudicating Authority.

Manner of service
of notice.

25. (1) A notice under sub-section (1) of section 24 may be served on the person named therein either by post or as if it were a summons issued by a Court under the Code of Civil Procedure, 1908.

5 of 1908.

(2) Any notice referred to in sub-section (1) may be addressed—

(i) in case of an individual, to such individual;

(ii) in the case of a firm, to the managing partner or the manager of the firm;

(iii) in the case of a Hindu undivided family, to *Karta* or any member of such family;

(iv) in the case of a company, to the principal officer thereof;

(v) in the case of any other association or body of individuals, to the principal officer or any member thereof;

(vi) in the case of any other person (not being an individual), to the person who manages or controls his affairs.

Adjudication of
benami property.

26. (1) On receipt of a reference under sub-section (5) of section 24, the Adjudicating Authority shall issue notice, to furnish such documents, particulars or evidence as is considered necessary on a date to be specified therein, on the following persons, namely:—

(a) the person specified as a *benamidar* therein;

(b) any person referred to as the beneficial owner therein or identified as such;

(c) any interested party, including a banking company;

(d) any person who has made a claim in respect of the property:

Provided that the Adjudicating Authority shall issue notice within a period of thirty days from the date on which a reference has been received:

Provided further that the notice shall provide a period of not less than thirty days to the person to whom the notice is issued to furnish the information sought.

(2) Where the property is held jointly by more than one person, the Adjudicating Authority shall make all endeavours to serve notice to all persons holding the property:

Provided that where the notice is served on anyone of the persons, the service of notice shall not be invalid on the ground that the said notice was not served to all the persons holding the property.

(3) The Adjudicating Authority shall, after—

(a) considering the reply, if any, to the notice issued under sub-section (1);

(b) making or causing to be made such inquiries and calling for such reports or evidence as it deems fit; and

(c) taking into account all relevant materials,

provide an opportunity of being heard to the person specified as a *benamidar* therein, the Initiating Officer, and any other person who claims to be the owner of the property, and, thereafter, pass an order—

(i) holding the property not to be a *benami* property and revoking the attachment order; or

(ii) holding the property to be a *benami* property and confirming the attachment order, in all other cases.

(4) Where the Adjudicating Authority is satisfied that some part of the properties in respect of which reference has been made to him is *benami* property, but is not able to specifically identify such part, he shall record a finding to the best of his judgment as to which part of the properties is held *benami*.

(5) Where in the course of proceedings before it, the Adjudicating Authority has reason to believe that a property, other than a property referred to it by the Initiating Officer is *benami* property, it shall provisionally attach the property and the property shall be deemed to be a property referred to it on the date of receipt of the reference under sub-section (5) of section 24.

(6) The Adjudicating Authority may, at any stage of the proceedings, either on the application of any party, or *suo motu*, strike out the name of any party improperly joined or add the name of any person whose presence before the Adjudicating Authority may be necessary to enable him to adjudicate upon and settle all the questions involved in the reference.

(7) No order under sub-section (3) shall be passed after the expiry of one year from the end of the month in which the reference under sub-section (5) of section 24 was received.

(8) The *benamidar* or any other person who claims to be the owner of the property may either appear in person or take the assistance of an authorised representative of his choice to present his case.

Explanation.—For the purposes of sub-section (8), authorised representative means a person authorised in writing, being—

(i) a person related to the *benamidar* or such other person in any manner, or a person regularly employed by the *benamidar* or such other person as the case may be; or

(ii) any officer of a scheduled bank with which the *benamidar* or such other person maintains an account or has other regular dealings; or

(iii) any legal practitioner who is entitled to practice in any civil court in India; or

(iv) any person who has passed any accountancy examination recognised in this behalf by the Board; or

(v) any person who has acquired such educational qualifications as the Board may prescribe for this purpose.

27. (1) Where an order is passed in respect of any property under sub-section (3) of section 26 holding such property to be a *benami* property, the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating the property held to be a *benami* property:

Confiscation and vesting of *benami* property.

Provided that where an appeal has been filed against the order of the Adjudicating Authority, the confiscation of property shall be made subject to the order passed by the Appellate Tribunal under section 46:

Provided further that the confiscation of the property shall be made in accordance with such procedure as may be prescribed.

(2) Nothing in sub-section (1) shall apply to a property held or acquired by a person from the *benamidar* for adequate consideration, prior to the issue of notice under sub-section (1) of section 24 without his having knowledge of the *benami* transaction.

(3) Where an order of confiscation has been made under sub-section (1), all the rights and title in such property shall vest absolutely in the Central Government free of all encumbrances and no compensation shall be payable in respect of such confiscation.

(4) Any right of any third person created in such property with a view to defeat the purposes of this Act shall be null and void.

(5) Where no order of confiscation is made upon the proceedings under this Act attaining finality, no claim shall lie against the Government.

Management of properties confiscated.

28. (1) The Administrator shall have the power to receive and manage the property, in relation to which an order of confiscation under sub-section (1) of section 27 has been made, in such manner and subject to such conditions, as may be prescribed.

(2) The Central Government may, by order published in the Official Gazette, notify as many of its officers as it thinks fit, to perform the functions of Administrators.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government under sub-section (3) of section 27, in such manner and subject to such conditions as may be prescribed.

Possession of the property.

29. (1) Where an order of confiscation in respect of a property under sub-section (1) of section 27, has been made, the Administrator shall proceed to take the possession of the property.

(2) The Administrator shall,—

(a) by notice in writing, order within seven days of the date of the service of notice to any person, who may be in possession of the *benami* property, to surrender or deliver possession thereof to the Administrator or any other person duly authorised in writing by him in this behalf;

(b) in the event of non-compliance of the order referred to in clause (a), or if in his opinion, taking over of immediate possession is warranted, for the purpose of forcibly taking over possession, requisition the service of any police officer to assist him and it shall be the duty of the officer to comply with the requisition.

CHAPTER V

APPELLATE TRIBUNAL

Establishment of
Appellate Tribunal.

30. The Central Government shall, by notification, establish an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority under this Act.

Composition, etc.,
of Appellate
Tribunal.

31. (1) The Appellate Tribunal shall consist of a Chairperson and at least two other Members of which one shall be a Judicial Member and other shall be an Administrative Member.

(2) Subject to the provisions of this Act,—

(a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson with two Members as the Chairperson may deem fit;

(c) the Benches of the Appellate Tribunal shall ordinarily sit in the National Capital Territory of Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify;

(d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Appellate Tribunal may exercise its jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson may transfer a Member from one Bench to another Bench.

32. (1) A person shall not be qualified for appointment as Chairperson of the Appellate Tribunal unless he is a sitting or retired Judge of a High Court, who has completed not less than five years' of service.

(2) A person shall not be qualified for appointment as a Member unless he—

(a) in the case of a Judicial Member, has been a Member of the Indian Legal Service and has held the post of Additional Secretary or equivalent post in that Service;

(b) in the case of an Administrative Member, has been a Member of the Indian Revenue Service and has held the post of Chief Commissioner of Income-tax or equivalent post in that Service.

(3) No sitting Judge of a High Court shall be appointed under this section except after consultation with the Chief Justice of the High Court.

(4) The Chairperson or a Member holding a post as such in any other Tribunal, established under any law for the time being in force, in addition to his being the Chairperson or a Member of that Tribunal, may be appointed as the Chairperson or a Member, as the case may be, of the Appellate Tribunal under this Act.

Qualification for
appointments of
Chairperson and
Members of
Appellate Tribunal.

33. (1) The salary and allowances payable to, and the other terms and conditions of service of the Chairperson and other Members shall be such as may be prescribed and shall not be varied to their disadvantage during their tenure.

Terms and conditions of services of Chairperson and Members of Appellate Tribunal.

(2) Any vacancy caused to the office of the Chairperson or any other Member shall be filled up within a period of three months from the date on which such vacancy occurs.

34. The Chairperson and Members of the Appellate Tribunal shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty-five years, whichever is earlier and shall not be eligible for reappointment.

Term of office of Chairperson and Members.

35. (1) The Central Government may, in consultation with the Chief Justice of High Court, remove from office of the Chairperson or any Member, who—

Removal of Chairperson and Members from office in certain circumstances.

(a) has been adjudged as an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government involves moral turpitude; or

(c) has become physically or mentally incapable; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) The Chairperson or Judicial Member shall not be removed from his office except by an order made by the Central Government after an inquiry made by Chief Justice of the High Court in which the Chairperson or Judicial Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may suspend from office the Chairperson or Judicial Member in respect of whom a reference of conducting an inquiry has been made to the Chief Justice of the High Court under sub-section (2), until the Central Government passes an order on receipt of the report of inquiry made by Chief Justice of the High Court on the reference.

(4) The Central Government may regulate the procedure for inquiry referred to in sub-section (2) in the manner as may be prescribed.

(5) The Administrative Member may be removed from his office by an order of the Central Government on the grounds specified in sub-section (1) and in accordance with the procedure notified by the Central Government:

Provided that the Administrative Member shall not be removed unless he has been given an opportunity of being heard in the matter.

36. No act or proceeding of the Appellate Tribunal shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of the Tribunal; or

Vacancies etc, not to invalidate proceedings of Appellate Tribunal.

(b) any defect in the appointment of a person acting as a Member of the Tribunal; or

(c) any irregularity in the procedure of the Tribunal not affecting the merits of the case.

Resignation and removal.

37. The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or any other Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of the notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.

Member to act as Chairperson in certain circumstances.

38. (1) In the event of the occurrence of any vacancy in the office of the Chairperson of the Appellate Tribunal by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Staff of Appellate Tribunal.

39. (1) The Central Government shall provide the Appellate Tribunal with such officers and employees as it may think fit.

(2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson.

(3) The salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal shall be such, as may be prescribed.

Procedure and powers of Appellate Tribunal.

40. (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

5 of 1908.

(2) The Appellate Tribunal shall, for the purposes of discharging its functions under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing a representation for default or deciding it *ex parte*;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and
- (i) any other matter, which may be, prescribed by the Central Government.

(3) An order made by the Appellate Tribunal under this Act shall be executable by it as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having jurisdiction and the civil court shall execute the order as if it were a decree made by that court.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

45 of 1860.

2 of 1974.

41. Where any Benches are constituted, the Chairperson may, from time to time, by notification, make provision as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

Distribution of business amongst Benches of Appellate Tribunal.

42. On the application of any of the parties and notice to the parties, and after hearing them, or on his own motion without any notice, the Chairperson of the Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.

Power of Chairperson of Appellate Tribunal to transfer cases.

43. If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson of the Appellate Tribunal who shall either hear the point or points himself or refer the case for hearing on the point or points by one or more of the other Members and the point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

Decision to be by majority.

44. The Chairperson, Members and other officers and employees of the Appellate Tribunal, the Adjudicating Authority, Approving Authority, Initiating Officer, Administrator and the officers subordinate to all of them shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Members etc, to be public servants.

45 of 1860.

45. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which any of the authorities, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine, and no injunction shall be granted by any court or other forum in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Bar of jurisdiction of civil courts.

46. (1) Any person, including the Initiating Officer, aggrieved by an order of the Adjudicating Authority may prefer an appeal in such form and along with such fees, as may be prescribed, to the Appellate Tribunal against the order passed by the Adjudicating Authority under sub-section (3) of section 26, within a period of forty-five days from the date of the order.

(2) The Appellate Tribunal may entertain any appeal after the said period of forty-five days, if it is satisfied that the appellant was prevented, by sufficient cause, from filing the appeal in time.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

(4) An Appellate Tribunal while deciding the appeal shall have the power—

(a) to determine a case finally, where the evidence on record is sufficient;

(b) to take additional evidence or to require any evidence to be taken by the Adjudicating Authority, where the Adjudicating Authority has refused to admit evidence, which ought to have been admitted;

(c) to require any document to be produced or any witness to be examined for the purposes of proceeding before it;

(d) to frame issues which appear to the Appellate Tribunal essential for adjudication of the case and refer them to the Adjudicating Authority for determination;

(e) to pass final order and affirm, vary or reverse an order of adjudication passed by the Adjudicating Authority and pass such other order or orders as may be necessary to meet the ends of justice.

(5) The Appellate Tribunal, as far as possible, may hear and finally decide the appeal within a period of one year from the last date of the month in which the appeal is filed.

Rectification
of mistakes.

47. (1) The Appellate Tribunal or the Adjudicating Authority may, in order to rectify any mistake apparent on the face of the record, amend any order made by it under section 26 and section 46 respectively, within a period of one year from the end of the month in which the order was passed.

(2) No amendment shall be made under sub-section (1), if the amendment is likely to affect any person prejudicially, unless he has been given notice of intention to do so and has been given an opportunity of being heard.

Right to
representation.

48. (1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of an authorised representative of his choice to present his case before the Appellate Tribunal.

(2) The Central Government may authorise one or more of its officers to act as presenting officers on its behalf, and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

Explanation.—For the purposes of this section, “authorised representative” means a person authorised by the appellant in writing to appear on his behalf, being—

(i) a person related to the appellant in any manner, or a person regularly employed by the appellant; or

((ii) any officer of a scheduled bank with which the appellant maintains an account or has other regular dealings; or

(iii) any legal practitioner who is entitled to practice in any civil court in India; or

(iv) any person who has passed any accountancy examination recognised in this behalf by the Board; or

(v) any person who has acquired such educational qualifications as the Board may prescribe for this purpose.

49. (1) Any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order.

Appeal to
High Court.

(2) The High Court may entertain any appeal after the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the period specified in sub-section (1).

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

(5) Nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(6) The High Court shall decide; the question of law so formulated and deliver the judgment thereon containing the grounds on which any decision is founded and may award any cost as it deems fit.

(7) The High Court may determine any issue which—

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

(8) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

CHAPTER VI

SPECIAL COURTS

50. (1) The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of an offence punishable under this Act, by notification, designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

Special Courts.

(2) While trying an offence under this Act, a Special Court shall also try an offence other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

2 of 1974.

(3) The Special Court shall not take cognizance of any offence punishable under this Act except upon a complaint in writing made by—

(i) the authority; or

(ii) any officer of the Central Government or State Government authorised in writing by that Government by a general or special order made in this behalf.

(4) Every trial under this section shall be conducted as expeditiously as possible and every endeavour shall be made by the Special Court to conclude the trial within six months from the date of filing of the complaint.

Application of Code
of Criminal
Procedure, 1973 to
proceedings before
Special Court.

51. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973, shall apply to the proceedings before a Special Court and the persons conducting the prosecution before the Special Court, shall be deemed to be Public Prosecutors:

2 of 1974.

Provided that the Central Government may also appoint for any case or class or group of cases, a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless, the Public Prosecutor has been in practice as an advocate for not less than seven years, and the Special Public Prosecutor has been in practice as an advocate for not less than ten years in any court.

(3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly.

2 of 1974.

Appeal and
revision.

52. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973, on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

2 of 1974.

CHAPTER VII

OFFENCES AND PROSECUTION

Penalty for
Benami
transactions

53. (1) Where any person enters into a *benami* transaction in order to defeat the provisions of any law or to avoid payment of statutory dues or to avoid payment to creditors, the beneficial owner, *benamidar* and any other person who abets or induces any person to enter into the *benami* transaction, shall be guilty of the offence of *benami* transaction.

(2) Whoever is found guilty of the offence of *benami* transaction referred to in sub-section (1) shall be punishable with rigorous imprisonment for a term which shall not be less than one year, but which may extend to seven years and shall also be liable to fine which may extend to twenty-five per cent, of the fair market value of the property.

Penalty for false
information.

54. Any person who is required to furnish information under this Act knowingly gives false information to any authority or furnishes any false document in any proceeding under this Act, shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine which may extend to ten per cent, of the fair market value of the property .

Previous sanction.

55. No prosecution shall be instituted against any person in respect of any offence under sections 3,53 or section 54 without the previous sanction of the Board.'

Substitution of new
Chapter VIII for
sections 7 and 8.

10. For sections 7 and 8 of the principal Act, the following shall be substituted, namely:—

'CHAPTER VIII

MISCELLANEOUS

Repeal of provi-
sions of certain
Acts.

56. (1) Sections 81, 82 and 94 of the Indian Trusts Act, 1882, section 66 of the Code of Civil Procedure, 1908 and section 281A of the Income-tax Act, 1961, are hereby repealed.

2 of 1882.
5 of 1908.
43 of 1961.

(2) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall affect the continued operation of section 281A of the Income-tax Act, 1961 in the State of Jammu and Kashmir.

43 of 1961.

4 of 1882.

57. Notwithstanding anything contained in the Transfer of the Property Act, 1882 or any other law for the time being in force, where, after the issue of a notice under section 24, any property referred to in the said notice is transferred by any mode whatsoever, the transfer shall, for the purposes of the proceedings under this Act, be ignored and if the property is subsequently confiscated by the Central Government under section 27, then, the transfer of the property shall be deemed to be null and void.

Certain transfer to
be null and void.

58. (1) The Central Government may, by notification, exempt any property relating to charitable or religious trusts from the operation of this Act.

Exemption.

(2) Every notification issued under sub-section (1) shall be laid before each House of Parliament.

59. (1) The Central Government may, from time to time, issue such orders, instructions or directions to the authorities or require any person to furnish information as it may deem fit for the proper administration of this Act and such authorities and all other persons employed in execution of this Act shall observe and follow the orders, instructions and directions of the Central Government.

Power of Central Government to issue directions etc.

(2) In issuing the directions or orders referred to in sub-section (1), the Central Government may have regard to anyone or more of the following criteria, namely:—

- (a) territorial area;
- (b) classes of persons;
- (c) classes of cases; and

(d) any other criterion that may be specified by the Central Government in this behalf.

(3) No orders, instructions or directions under sub-section (1) shall be issued so as to—

(a) require any authority to decide a particular case in a particular manner; or

(b) interfere with the discretion of the Adjudicating Authority in the discharge of its functions.

60. The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of any other law for the time being in force.

Application of other laws and barred.

2 of 1974.

61. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this Act shall be non-cognizable.

Offences to be non-cognizable.

62. (1) Where a person committing contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Offences by companies.

(2) Nothing contained in sub-section (1), shall render any person liable to punishment if he proves that the contravention took place without his knowledge.

(3) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, the director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means a body corporate, and includes—

(i) a firm; and

(ii) an association of persons or a body of individuals whether incorporated or not; and

(b) “director”, in relation to—

(i) a firm, means a partner in the firm;

(ii) any association of persons or a body of individuals, means any member controlling the affairs thereof.

Notice, etc, not to be invalid on certain grounds.

63. No notice, summons, order, document or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in the notice, summons, order, document or other proceeding if the notice, summons, order, document or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

Protection of action taken in good faith.

64. No prosecution, suit or other proceeding shall lie against the Government or any officer of the Government or the Appellate Tribunal or the Adjudicating Authority established under this Act, for anything done or intended to be done in good faith under this Act.

Transfer of pending cases.

65. (1) Every suit or proceeding in respect of a *benami* transaction pending in any Court (other than a High Court) or Tribunal or before any forum on the date of the commencement of this Act shall stand transferred to the Adjudicating Authority or the Appellate Tribunal, as the case may be, having jurisdiction in the matter.

(2) Where any suit, or other proceeding stands transferred to the Adjudicating Authority or the Appellate Tribunal under sub-section (1),—

(a) the court, Tribunal or other forum shall, as soon as may be, after the transfer, forward the records of the suit, or other proceeding to the Adjudicating Authority or the Appellate Tribunal, as the case may be;

(b) the Adjudicating Authority may, on receipt of the records, proceed to deal with the suit, or other proceeding, so far as may be, in the same manner as in the case of a reference made under sub-section (5) of section 24, from the stage which was reached before the transfer or from any earlier stage or *de novo* as the Adjudicating Authority may deem fit.

Proceedings etc, against legal representative.

66. (1) Where a person dies during the course of any proceeding under this Act, any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased.

(2) Any proceeding which could have been taken against the deceased if he had survived may be taken against the legal representative and all the provisions of this Act, except sub-section (2) of section 3 and the provisions of Chapter VII, shall apply accordingly.

(3) Where any property of a person has been held *benami* under sub-section (3) of section 26, then, it shall be lawful for the legal representative of the person to prefer an appeal to the Appellate Tribunal, in place of the person and the provisions of section 46 shall, so far as may be, apply, or continue to apply, to the appeal.

67. The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Act to have
overriding effect.

68. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power to make
rules

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) manner of ascertaining the fair market value under clause 16 of section 2;

(b) the manner of appointing the Chairperson and the Member of the Adjudicating Authorities under sub-section (2) of section 9;

(c) the salaries and allowances payable to the Chairperson and the Members of the Adjudicating Authority under sub-section (1) of section 13;

(d) the powers and functions of the authorities under sub-section (2) of section 18;

(e) other powers of the authorities under clause (f) of sub-section (1) of section 19;

(f) the form and manner of furnishing any information to the authority under sub-section (2) of section 21;

(g) the manner of provisional attachment of property under sub-section (3) of section 24;

(h) the procedure for confiscation of *benami* property under the second proviso to sub-section (1) of section 27;

(i) the manner and conditions to receive and manage the property under sub-section (1) of section 28;

(j) the manner and conditions of disposal of property vested in the Central Government under sub-section (3) of section 28;

(k) the salaries and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 33;

(l) the manner of prescribing procedure for removal of Chairperson or Member under sub-section (4) of section 35;

(m) the salaries and allowances payable to and the other terms and conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of section 39;

(n) any power of the Appellate Tribunal under clause (f) of sub-section (2) of section 40;

(o) the form in which appeal shall be filed and the fee for filing the appeal under sub-section (1) of section 46;

(p) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

69. Every rule made and notification issued under this Act shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rules or notifications, as the case may be, both Houses agree that the rules or notifications, as the case may be, should not be made or issued, the rule or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification, as the case may be.

Laying of rules and notifications before Parliament.

Power to remove difficulties.

70. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty.

(2) No order shall be made under this section after the expiry of two years from the commencement of this Act.

(3) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Transitional provision.

71. The Central Government may, by notification, provide that until the Adjudicating Authorities are appointed and the Appellate Tribunal is established under this Act, the Adjudicating Authority appointed under sub-section (f) of section 6 of the Money-Laundering Act, 2002 and the Appellate Tribunal established under section 25 of that Act may discharge the functions of the Adjudicating Authority and Appellate Tribunal, respectively, under this Act.'

15 of 2003.

Amendment of section 9.

11. Section 9 of the principal Act shall be renumbered as section 72 thereof.

THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY
OF DEBTS LAWS AND MISCELLANEOUS PROVISIONS
(AMENDMENT) ACT, 2016

An

Act

further to amend the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Recovery of Debts due to Banks and Financial Institutions Act, 1993, the Indian Stamp Act, 1899, and the Depositories Act, 1996, and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows :-

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Enforcement of Security Interest and Recovery of debts Laws and Miscellaneous Provisions (Amendment) Act, 2016.

Short title and
Commencement.

(2) It Shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

CHAPTER II

AMENDMENTS TO THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS
AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002

Amendment
of long title.

2. In the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter referred to in this Chapter as the principal Act), for the long title, the following shall be substituted, namely:—

54 of 2002.

“An Act to regulate securitisation and reconstruction of financial assets and enforcement of security interest and to provide for a Central database of security interests created on property rights, and for matters connected therewith or incidental thereto.”.

Substitution of
reference to certain
expression by other
expressions.

3. Throughout the principal Act,—

(i) for the words “securitisation company”, “reconstruction company”, “securitisation or reconstruction company”, “securitisation company or the reconstruction company” or “securitisation company or a reconstruction company”, wherever they occur, the words “asset reconstruction company” shall be substituted;

Amendment
of section 2.

(ii) for the words “securitisation companies or reconstruction companies”, wherever they occur, the words “asset reconstruction companies” shall be substituted;

(iii) for the words “qualified institutional buyer”, wherever they occur, the words “qualified buyer” shall be substituted;

(iv) for the words “qualified institutional buyers”, wherever they occur, the words “qualified buyers” shall be substituted.

4. In the principal Act, in section 2, in sub-section (1),—

(i) after clause (b), the following clause shall be inserted, namely:—

‘(ba) “asset reconstruction company” means a company registered with Reserve Bank under section 3 for the purposes of carrying on the business of asset reconstruction or securitisation, or both;’;

(ii) in clause (f), after the words “financial institution in relation to such financial assistance”, the words “or who has raised funds through issue of debt securities” shall be inserted;

(iii) after clause (g), the following clause shall be inserted namely:—

‘(ga) “company” means a company as defined in clause (20) of section 2 of the Companies Act, 2013;’;

18 of 2013.

(iv) for clause (ha), the following clause shall be substituted, namely:—

‘(ha) “debt” shall have the meaning assigned to it in clause (g) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and includes—

51 of 1993.

(i) unpaid portion of the purchase price of any tangible asset given on hire or financial lease or conditional sale or under any other contract;

(ii) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable any borrower to acquire the intangible asset or obtain licence of such asset;

(v) after clause (i), the following clause shall be inserted, namely:—

‘(ia) “debt securities” means debt securities listed in accordance with the regulations made by the Board under the Securities and Exchange Board of India Act, 1992;’;

15 of 1992.

(vi) for clause (j), the following clause shall be substituted, namely:—

‘(j) “default” means—

(i) non-payment of any debt or any other amount payable by the borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor; or

(ii) non-payment of any debt or any other amount payable by the borrower with respect to debt securities after notice of ninety days demanding payment of dues served upon such borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of such debt securities;”;

(vii) in clause (k), after the words “any bank or financial institution”, the following words shall be inserted, namely:—

“including funds provided for the purpose of acquisition of any tangible asset on hire or financial lease or conditional sale or under any other contract or obtaining assignment or licence of any intangible asset or purchase of debt securities;”;

(viii) in clause (l), after sub-clause (v), the following sub-clauses shall be inserted, namely:—

“(va) any beneficial right, title or interest in any tangible asset given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire such tangible asset; or

(vb) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain licence of the intangible asset; or”;

(ix) in clause (m), after sub-clause (iii), the following sub-clauses shall be inserted, namely:—

“(iiia) a debenture trustee registered with the Board and appointed for secured debt securities;

(iiib) asset reconstruction company, whether acting as such or managing a trust created for the purpose of securitisation or asset reconstruction, as the case may be;”;

(x) after clause (m), the following clause shall be inserted, namely:—

“(ma) “financial lease” means a lease under any lease agreement of tangible asset, other than negotiable instrument or negotiable document, for transfer of lessor’s right therein to the lessee for a certain time in consideration of payment of agreed amount periodically and where the lessee becomes the owner of the such assets at the expiry of the term of lease or on payment of the agreed residual amount, as the case may be;”;

(xi) after clause (n), the following clause shall be inserted, namely:—

(na) “negotiable document” means a document, which embodies a right to delivery of tangible assets and satisfies the requirements for negotiability under any law for the time being in force including warehouse receipt and bill of lading;”;

(xii) in clause (f) in sub-clause (v), after the words “right of similar nature”, the words “as may be prescribed by the Central Government in consultation with Reserve Bank” shall be inserted;

(xiii) in clause (u), after the words “regulations made thereunder,”, the words, figures and brackets “any category of non-institutional investors as may be specified by the Reserve Bank under sub-section (1) of section 7” shall be inserted;

(xiv) clause (v) shall be omitted;

(xv) clause (za) shall be omitted;

(xvi) for clause (zd), the following clause shall be substituted, namely:—

‘(zd) “secured creditor” means—

(i) any bank or financial institution or any consortium or group of banks or financial institutions holding any right, title or interest upon any tangible asset or intangible asset as specified in clause (l);

(ii) debenture trustee appointed by any bank or financial institution; or

(iii) an asset reconstruction company whether acting as such or managing a trust set up by such asset reconstruction company for the securitisation or reconstruction, as the case may be; or

(iv) debenture trustee registered with the Board appointed by any company for secured debt securities; or

(v) any other trustee holding securities on behalf of a bank or financial institution,

in whose favour security interest is created by any borrower for due repayment of any financial assistance.’;

(xvii) for clause (zf), the following clause shall be substituted, namely:—

‘(zf) “security interest” means right, title or interest of any kind, other than those specified in section 31, upon property created in favour of any secured creditor and includes—

(i) any mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, on tangible asset, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or credit provided to enable the borrower to acquire the tangible asset; or

(ii) such right, title or interest in any intangible asset or assignment or licence of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or licence of intangible asset.’;

Amendment of
section 3.

5. In the principal Act, in section 3,—

(i) in sub-section (l), for clause (b), the following clause shall be substituted, namely:—

“(b) having net owned fund of not less than two crore rupees or such **other** higher amount as the Reserve Bank, may, by notification, specify:”;

(ii) in sub-section (3),—

(a) for clause (f), the following clause shall be substituted, namely:—

“(f) that a sponsor of an asset reconstruction company is a fit and proper person in accordance with the criteria as may be specified in the guidelines issued by the Reserve Bank for such persons;”;

(b) clause (d) shall be omitted.

(iii) in sub-section (6),—

(a) after the words “any substantial change in its management”, the words “including appointment of any director on the board of directors of the asset reconstruction company or managing director or chief executive officer thereof shall be inserted;

(b) in the *Explanation*, after the words “by way of transfer of shares or”, the words “change affecting the sponsorship in the company by way of transfer of shares or” shall be inserted.

6. In the principal Act, in section 5,—

(i) after sub-section (f), the following sub-section shall be inserted, namely:—

“(1A) Any document executed by any bank or financial institution under sub-section (1) in favour of the asset reconstruction company acquiring financial assets for the purposes of asset reconstruction or securitisation shall be exempted from stamp duty in accordance with the provisions of section 8F of the Indian Stamp Act, 1899:

Provided that the provisions of this sub-section shall not apply where the acquisition of the financial assets by the asset reconstruction company is for the purposes other than asset reconstruction or securitisation.”;

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) If the bank or financial institution is holding any right, title or interest upon any tangible asset or intangible asset to secure payment of any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire the tangible asset or assignment or licence of intangible asset, such right, title or interest shall vest in the asset reconstruction company on acquisition of such assets under sub-section (1).”;

7. In the principal Act, in section 7, in sub-section (1), for the brackets and words “(other than by offer to public)”, the words “or such other category of investors including non-institutional investors as may be specified by the Reserve Bank in consultation with the Board, from time to time,” shall be substituted.

8. In the principal Act, for section 9, the following section shall be substituted, namely:—

“9.(1) Without prejudice to the provisions contained in any other law for the time being in force, an asset reconstruction company may, for the purposes of assets reconstruction, provide for any one more of the following measures.

Amendment of
section 5.

Amendment of
section 7.

Substitution of new
section for section
9.

Measures for assets
reconstruction.

- (a) the proper management of the business of the borrower, by change in, or take over of, the management of the business of the borrower;
- (b) the sale or lease of a part or whole of the business of the borrower;
- (c) rescheduling of payment of debts payable by the borrower;
- (d) enforcement of security interest in accordance with the provisions of this Act;
- (e) settlement of dues payable by the borrower;
- (f) taking possession of secured assets in accordance with the provisions of this Act;
- (g) conversion of any portion of debt into shares of a borrower company:

Provided that conversion of any part of debt into shares of a borrower company shall be deemed always to have been valid, as if the provisions of this clause were in force at all material times.

(2) The Reserve Bank shall, for the purposes of sub-section (1), determine the policy and issue necessary directions including the direction for regulation of management of the business of the borrower and fees to be charged.

(3) The asset reconstruction company shall take measures under sub-section (1) in accordance with policies and directions of the Reserve Bank determined under sub-section (2)."

Amendment of section 12.

9. In the principal Act, in section 12, in sub-section (2), after clause (b), the following clauses shall be inserted, namely:—

"(c) the fee and other charges which may be charged or incurred for management of financial assets acquired by any asset reconstruction company;

(d) transfer of security receipts issued to qualified buyers."

Insertion of new section 12B.

10. In the principal Act, after section 12A, the following section shall be inserted, namely:—

Power of Reserve Bank to carry out audit and inspection.

"12B. (1) The Reserve Bank may, for the purposes of this Act, carry out or caused to be carried out audit and inspection of an asset reconstruction company from time to time.

(2) It shall be the duty of an asset reconstruction company and its officers to provide assistance and cooperation to the Reserve Bank to carry out audit or inspection under sub-section (1).

(3) Where on audit or inspection or otherwise, the Reserve Bank is satisfied that business of an asset reconstruction company is being conducted in a manner detrimental to public interest or to the interests of investors in security receipts issued by such asset reconstruction company, the Reserve Bank may, for securing proper management of an asset reconstruction company, by an order—

(a) remove the Chairman or any director or appoint additional directors on the board of directors of the asset reconstruction company; or

(b) appoint any of its officers as an observer to observe the working of the board of directors of such asset reconstruction company:

Provided that no order for removal of Chairman or director under clause (a) shall be made except after giving him an opportunity of being heard.

(4) It shall be the duty of every director or other officer or employee of the asset reconstruction company to produce before the person, conducting an audit or inspection under sub-section (1), all such books, accounts and other documents in his custody or control and to provide him such statements and information relating to the affairs of the asset reconstruction company as may be required by such person within the stipulated time specified by him.”.

11. In the principal Act, in section 13,—

(i) in sub-section (2), the following proviso shall be inserted, namely:—

Amendment of
section 13.

“Provided that—

(i) the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and

(ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee;”;

(iii) for sub-section (8), the following sub-section shall be substituted, namely:—

“(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,—

(i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.”.

12. In the principal Act, in section 14, in sub-section (1),—

(i) in the second proviso, after the words “secured assets”, the words “within a period of thirty days from the date of application” shall be inserted;

Amendment of
section 14.

(ii) after the second proviso, the following proviso shall be inserted, namely:—

“Provided further that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.”.

13. In the principal Act, in section 15, in sub-section (4), the following proviso shall be inserted, namely:—

Amendment of
section 15.

“Provided that if any secured creditor jointly with other secured creditors or any asset reconstruction company or financial institution or any other assignee has converted part of its debt into shares of a borrower company and thereby acquired controlling interest in the borrower company, such secured creditors shall not be liable to restore the management of the business to such borrower.”.

Amendment of
section 17.

14. In the principal Act, in section 17,—

(i) for the marginal heading “Right to appeal”, the words “Application against measures to recover secured debts” shall be substituted;

(ii) after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.”;

(iii) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may by order,—

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.”;

(iv) After sub-section (4), the following sub-section shall be inserted, namely,—

“(4A) Where—

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—

(a) has expired or stood determined; of

(b) is contrary to section 65A of the Transfer of Property Act, 1882; or

4 of 1882.

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.”.

15. In the principal Act, in section 19, for the words “concerned borrowers, such borrowers”, the words “concerned borrowers or any other aggrieved person, who has filed the application under section 17 or section 17A or appeal under section 18 or section 18 A, as the case may be, the borrower or such other person” shall be substituted.

Amendment of section 19.

16. In the principal Act, after section 20, the following sections shall be inserted, namely:—

Insertion of new section 20A and 20B.

“20A. (1) The Central Government may, for the purpose of providing a Central database, in consultation with State Governments or other authorities operating registration system for recording rights over any property or creation, modification or satisfaction of any security interest on such property, integrate the registration records of such registration systems with the records of Central Registry established under section 20, in such manner as may be prescribed.

Integration of registration systems with Central Registry.

18 of 2013.

16 of 1908

44 of 1958

59 of 1988

39 of 1970

16 of 2000

Explanation.—For the purpose of this sub-section, the registration records includes records of registration under the Companies Act, 2013, the Registration Act, 1908, the Merchant Shipping Act, 1958, the Motor Vehicles Act, 1988, the Patents Act, 1970, the Designs Act, 2000 or other such records under any other law for the time being in force.

(2) The Central Government shall after integration of records of various registration systems referred to in sub-section (1) with the Central Registry, by notification, declare the date of integration of registration systems and the date from which such integrated records shall be available; and with effect from such date, security interests over properties which are registered under any registration system referred to in sub-section (1) shall be deemed to be registered with the Central Registry for the purposes of this Act.”.

“20B. The Central Government may, by notification, delegate its powers and functions under this Chapter, in relation to establishment, operations and regulation of the Central Registry to the Reserve Bank, subject to such terms and conditions as may be prescribed.”.

Delegation of powers.

17. In the principal Act,—

Amendment of section 23.

(i) section 23 shall be numbered as sub-section (1), and in sub-section (1) as so re-numbered,—

(a) the words “within thirty days after the date of such transaction or creation of security, by the securitisation company or reconstruction company or the secured creditor, as the case may be” shall be omitted;

(b) the first proviso shall be omitted;

(c) in the second proviso, the word “further” shall be omitted;

(ii) in section 23, after sub-section (1) so renumbered, the following sub-sections shall be inserted, namely:—

“(2) The Central Government may, by notification, require the registration of transaction relating to different types of security interest created on different kinds of property with the Central Registry.

(3) The Central Government may, by rules, prescribe forms for registration for different types of security interest under this section and fee to be charged for such registration.”.

Insertion of new Chapter IVA.

18. In the principal Act, after section 26A, the following chapter shall be inserted, namely:—

“CHAPTER IVA

REGISTRATION BY SECURED CREDITORS AND OTHER CREDITORS

Registration by secured creditors and other creditors.

26B. (1) The Central Government may by notification, extend the provisions of Chapter IV relating to Central Registry to all creditors other than secured creditors as defined in clause (zd) of sub-section (1) of section 2, for creation, modification or satisfaction of any security interest over any property of the borrower for the purpose of securing due repayment of any financial assistance granted by such creditor to the borrower.

(2) From the date of notification under sub-section (1), any creditor including the secured creditor may file particulars of transactions of creation, modification or satisfaction of any security interest with the Central Registry in such form and manner as may be prescribed.

(3) A creditor other than the secured creditor filing particulars of transactions of creation, modification and satisfaction of security interest over properties created in its favour shall not be entitled to exercise any right of enforcement of securities under this Act.

(4) Every authority or officer of the Central Government or any State Government or local authority, entrusted with the function of recovery of tax or other Government dues and for issuing any order for attachment of any property of any person liable to pay the tax or Government dues, shall file with the Central Registry such attachment order with particulars of the assessee and details of tax or other Government dues from such date as may be notified by the Central Government, in such form and manner as may be prescribed.

(5) If any person, having any claim against any borrower, obtains orders for attachment of property from any court or other authority empowered to issue attachment order, such person may file particulars of such attachment orders with Central Registry in such form and manner on payment of such fee as may be prescribed.

Effect of the
registration of
transactions etc.

26C. (1) Without prejudice to the provisions contained in any other law, for the time being in force, any registration of transactions of creation, modification or satisfaction of security interest by a secured creditor or other creditor or filing of attachment orders under this Chapter shall be deemed to constitute a public notice from the date and time of filing of particulars of such transaction with the Central Registry for creation, modification or satisfaction of such security interest or attachment order, as the case may be.

(2) Where security interest or attachment order upon any property in favour of the secured creditor or any other creditor are filed for the purpose of registration under the provisions of Chapter IV and this Chapter, the claim of such secured creditor or other creditor holding attachment order shall have priority over any subsequent security interest created upon such property and any transfer by way of sale, lease or assignment or licence of such property or attachment order subsequent to such registration, shall be subject to such claim:

Provided that nothing contained in this sub-section shall apply to transactions carried on by the borrower in the ordinary course of business.

26D. Notwithstanding anything contained in any other law for the time being in force, from the date of commencement of the provisions of this Chapter, no secured creditor shall be entitled to exercise the rights of enforcement of securities under Chapter III unless the security interest created in its favour by the borrower has been registered with the Central Registry.

Right of enforce-
ment of securities.

26E. Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.

Priority to secured
creditors.

31 of 2016.

Explanation.—For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.”.

19. In section 27, the following proviso shall be inserted, namely:—

Amendment of
section 27.

“Provided that provisions of this section shall be deemed to have been omitted from the date of coming into force of the provisions of this Chapter and section 23 as amended by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016.”.

20. In the principal Act, section 28, shall be omitted.

Omission of section
28.

21. In the principal Act, after section 30, the following sections shall be inserted, namely:—

Insertion of new section 30A, 30B, 30C and 30D.

“30A. (1) Where any asset reconstruction company or any person fails to comply with any direction issued by the Reserve Bank under this Act the adjudicating authority may, by an order, impose on such company or person in default, a penalty not exceeding one crore rupees or twice the amount involved in such failure where such amount is quantifiable, whichever is more, and where such failure is a continuing one, a further penalty which may extend to one lakh rupees for every day, after the first, during which such failure continues.

Power of adjudicating authority to impose penalty.

(2) For the purpose of imposing penalty under sub-section (1), the adjudicating authority shall serve a notice on the asset reconstruction company or the person in default requiring such company or person to show cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard shall be given to such person.

(3) Any penalty imposed under this section shall be payable within a period of thirty days from the date of issue of notice under sub-section (2).

(4) Where the asset reconstruction company fails to pay the penalty within the specified period under sub-section (3), the adjudicating authority shall, by an order, cancel its registration:

Provided that an opportunity of being heard shall be given to such asset reconstruction company before cancellation of registration.

(5) No complaint shall be filed against any person in default in any court pertaining to any failure under sub-section (1) in respect of which any penalty has been imposed and recovered by the Reserve Bank under this section.

(6) Where any complaint has been filed against a person in default in the court having jurisdiction no proceeding for imposition of penalty against that person shall be taken under this section.

Explanation.—For the purposes of this section and sections 30B, 30C and 30D,—

(i) “adjudicating authority” means such officer or a committee of officers of the Reserve Bank, designated as such from time to time, by notification, by the Central Board of Reserve Bank;

(ii) “person in default” means the asset reconstruction company or any person which has committed any failure, contravention or default under this Act and any person incharge of such company or such other person, as the case may be, shall be liable to be proceeded against and punished under section 33 for such failure or contravention or default committed by such company or person.

Appeal against penalties.

30B. A person in default, aggrieved by an order passed under sub-section (4) of section 30A, may, within a period of thirty days from the date on which such order is passed, prefer an appeal to the Appellate Authority:

Provided that the Appellate Authority may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within such period.

Appellate
Authority.

30C. (1) The Central Board of Reserve Bank may designate such officer or committee of officers as it deems fit to exercise the power of Appellate Authority.

(2) The Appellate Authority shall have power to pass such order as it deems fit after providing a reasonable opportunity of being heard to the person in default.

(3) The Appellate Authority may, by an order stay the enforcement of the order passed by the adjudicating authority under section 30A, subject to such terms and conditions, as it deems fit.

(4) Where the person in default fails to comply with the terms and conditions imposed by order under sub-section (3) without reasonable cause, the Appellate Authority may dismiss the appeal.

Recovery of
penalties.

30D. (1) Any penalty imposed under section 30A shall be recovered as a "recoverable sum" and shall be payable within a period of thirty days from the date on which notice demanding payment of the recoverable sum is served upon the person in default and, in the case of failure of payment by such person within such period, the Reserve Bank may, for the purpose of recovery,—

(a) debit the current account, if any, of the person in default maintained with the Reserve Bank or by liquidating the securities, if any, held to the credit of such person in the books of the Reserve Bank;

(b) issue a notice to the person from whom any amount is due to the person in default, requiring such person to deduct from the amount payable by him to the person in default, such amount equivalent to the amount of the recoverable sum, and to make payment of such amount to the Reserve Bank.

(2) Save as otherwise provided in sub-section (4), a notice issued under clause (b) of sub-section (1) shall be binding on every person to whom it is issued, and, where such notice is issued to a post office, bank or an insurance company, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry or endorsement thereof before payment is made, notwithstanding any rule, practice or requirement to the contrary.

(3) Any claim in respect of any amount, arising after the date of issue of notice under sub-section (1) shall be void as against the demand contained in such notice.

(4) Any person, to whom the notice is sent under sub-section (1), objects to such notice by a statement on oath that the sum demanded or any part thereof is not due to the person in default or that he does not hold any money for or on account of the person in default, then nothing contained in this section shall be deemed to require, such person to pay such sum or part thereof, as the case may be.

(5) Where it is found that statement made by the person under sub-section (4) is false in material particulars, such person shall be personally liable to the Reserve Bank to the extent of his own liability to the person in default on the date of the notice, or to the extent of the recoverable sum payable by the person in default to the Reserve Bank, whichever is less.

(6) The Reserve Bank may, at any time, amend or revoke any notice issued under sub-section (1) or extend the time for making the payment in pursuance of such notice.

(7) The Reserve Bank shall grant a receipt for any amount paid to it in compliance with a notice issued under this section and the person so paying shall be fully discharged from his liability to the person in default to the extent of the amount so paid.

(8) Any person discharging any liability to the person in default after the receipt of a notice under this section shall be personally liable to the Reserve Bank—

(a) to the extent of his own liability to the person in default so discharged; or

(b) to the extent of the recoverable sum payable by the person in default to the Reserve Bank,

whichever is less.

(9) Where the person to whom the notice is sent under this section, fails to make payment in pursuance thereof to the Reserve Bank, he shall be deemed to be the person in default in respect of the amount specified in the notice and action or proceedings may be taken or instituted against him for the realisation of the amount in the manner provided in this section.

(10) The Reserve Bank may enforce recovery of recoverable sum through the principal civil court having jurisdiction in the area where the registered office or the head office or the principal place of business of the person in default or the usual place of residence of such person is situated as if the notice issued by the Reserve Bank were a decree of the Court.

(11) No recovery under sub-section (10) shall be enforced, except on an application made to the principal civil court by an officer of the Reserve Bank authorised in this behalf certifying that the person in default has failed to pay the recoverable sum.”.

22. In the principal Act, in section 31, clause (e) shall be omitted.

Amendment of section 31.

23. In the principal Act, in section 31A, for sub-section (2), the following sub-sections shall be substituted, namely:—

Amendment of section 31A.

“(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

(3) In reckoning any such period of thirty days as is referred to in sub-section (2), no account shall be taken of any period during which the House referred to in sub-section (2) is prorogued or adjourned for more than four consecutive days.

(4) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament..”

Amendment of
section 32.

24. In the principal Act, in section 32, for the words “any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower”, the words “the Reserve Bank or the Central Registry or any secured creditor or any of its officers” shall be substituted.

Amendment of
section 38.

25. In the principal Act, in section 38, in sub-section (2),—

(i) clause (a) shall be numbered as clause (aa) and before clause (aa) as so renumbered, the following clause shall be inserted, namely:—

“(a) other business or commercial rights of similar nature under clause (t) of section 2;”;

(ii) after clause (bc), the following clauses shall be inserted, namely:—

“(bca) the manner of integration of records of various registration systems with the records of Central Registry under sub-section (1) of section 20A;

“(bcb) the terms and conditions of delegation of powers by the Central Government to the Reserve Bank under section 20B.”;

(iii) after clause (d), the following clauses shall be inserted, namely:—

“(da) the form for registration of different types of security interests and fee thereof under sub-section (3) of section 23;”

(iv) after clause (f), the following clauses shall be inserted, namely:—

“(fa) the form and the manner for filing particulars of transactions under sub-section (2) of section 26B;

“(fb) the form and manner of filing attachment orders with the Central Registry and the date under sub-section (4) of section 26B;

“(fc) the form and manner of filing particulars of attachment order with the Central Registry and the fee under sub-section (5) of section 26B.”.

CHAPTER III

AMENDMENTS TO THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993

Amendment of
section 2.

26. In the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter in this Chapter referred to as the principal Act), in section 2,—

(i) in clause (g), after the words “the date of the application”, the following words shall be inserted, namely:—

“and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities or;”;

(ii) after clause (g), the following clause shall be inserted, namely:—

“(ga) “debt securities” means debt securities listed in accordance with regulations made by the Securities Exchange Board of India under the Securities and Exchange Board of India Act, 1992;”;

51 of 1993.

15 of 1992.

(iii) in clause (h), after sub-clause (ia), the following sub-clause shall be inserted, namely:—

“(ib) a debenture trustee registered with the Board and appointed for secured debt securities;”;

(iv) after clause (h), the following clause shall be inserted, namely.—

‘(ha) “financial lease” means a lease under a lease agreement of tangible asset, other than negotiable instrument or negotiable document, for transfer of lessor’s right therein to the lessee for a certain time in consideration of payment of agreed amount periodically and where lessee becomes the owner of the such assets at the expiry of the term of lease or on payment of the agreed residual amount, as the case may be;’;

(v) after clause (ja), the following clause shall be inserted, namely:—

‘(jb) “property” means—

(a) immovable property;

(b) movable property;

(c) any debt or any right to receive payment of money, whether secured or unsecured;

(d) receivables, whether existing or future;

(e) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature, as may be prescribed by the Central Government in consultation with Reserve Bank;’;

(vi) after clause (l), the following clauses shall be inserted, namely:—

‘(la) “secured creditor” shall have the meaning as assigned to it in clause (zd) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(lb) “security interest” means mortgage, charge, hypothecation, assignment or any other right, title or interest of any kind whatsoever upon property, created in favour of any bank or financial institution and includes—

(a) such right, title or interest upon tangible asset, retained by the bank or financial institution as owner of the property, given on hire or financial lease or conditional sale which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or any credit provided to enable the borrower to acquire the tangible asset; or

(b) such right, title or interest in any intangible asset or licence of any intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit extended to enable the borrower to acquire the intangible asset or licence of intangible asset;’.

27. In the principal Act, in section 4, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Notwithstanding anything contained in sub-section (1), the Central Government may—

54 of 2002.

Amendment of
section 4.

(a) authorise the Presiding Officer of any other Tribunal established under any other law for the time being in force to discharge the function of the Presiding Officer of a Debt Recovery Tribunal under this Act in addition to his being the Presiding Officer of that Tribunal; or

(b) authorise the judicial Member holding post as such in any other Tribunal, established under any other law for the time being in force, to discharge the functions of the Presiding Officer of Debts Recovery Tribunal under this Act, in addition to his being the judicial Member of that Tribunal.”.

Amendment of
section 6.

28. In the principal Act, for section 6, the following section shall be substituted, namely:—

Term of office of
Presiding Officer.

“6. The Presiding Officer of a Tribunal shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment:

Provided that no person shall hold office as the Presiding Officer of a Tribunal after he has attained the age of sixty-five years.”.

Amendment of
section 8.

29. In the principal Act, in section 8, in sub-section (1), the following proviso shall be inserted, namely:—

“Provided that the Central Government may authorise the Chairperson of any other Appellate Tribunal, established under any other law for the time being in force, to discharge the functions of the Chairperson of the Debts Recovery Appellate Tribunal under this Act in addition to his being the Chairperson of that Appellate Tribunal.”.

Amendment of
section 11.

30. In the Principal Act, for section 11, the following section shall be substituted, namely:—

Term of office of
Chairperson of
Appellate Tribunal.

“11. The Chairperson of an Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment:

Provided that no person shall hold office as the Chairperson of a Appellate Tribunal after he has attained the age of seventy years.”.

Amendment of
section 17A.

31. In the principal Act, in section 17A, after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) For the purpose of exercise of general powers of superintendence and control over Tribunals under sub-section (1), the Chairperson may—

(i) direct the Tribunals to furnish, in such form, at such intervals and within such time, information relating to pending cases both under this Act and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, or under any other law for the time being in force, number of cases disposed of, number of new cases filed and such other information as may be considered necessary by the Chairperson;

(ii) convene meetings of the Presiding Officers of Tribunals periodically to review their performance.

(1B) Where on assessment of the performance of any Presiding Officer of the Tribunal or otherwise, the Chairperson is of the opinion that

an inquiry is required to be initiated against such Presiding Officer for misbehaviour or incapacity, he shall submit a report to the Central Government recommending action against such Presiding Officer, if any, under section 15, and for reasons to be recorded in writing for the same.”.

Amendment of
section 19.

32. In the principal Act, in section 19,—

(i) in sub-section (1), clause (a) shall be renumbered as clause (aa) and before clause (aa) so renumbered, the following clause shall be inserted, namely:—

“(a) the branch or any other office of the bank or financial institution is maintaining an account in which debt claimed is outstanding, for the time being; or”;

(ii) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Every application under sub-section (1) or sub-section (2) shall be in such form, and shall be accompanied with true copies of all documents relied on in support of the claim along with such fee, as may be prescribed.”.

(iii) in sub-section (3), after the second proviso, the following *Explanation* shall be inserted, namely:—

“*Explanation.*—For the purposes of this section, documents includes statement of account or any entry in banker’s book duly certified under the Bankers’ Books Evidence Act, 1891.”;

18 of 1891.

(iv) after sub-section (3), sub-section (3A) shall be renumbered as sub-section (3B) and before sub-section (3B) so renumbered, the following sub-section shall be inserted, namely:—

“(3A) Every applicant in the application filed under sub-section (1) or sub-section (2) for recovery of debt, shall—

(a) state particulars of the debt secured by security interest over properties or assets belonging to any of the defendants and the estimated value of such securities;

(b) if the estimated value of securities is not sufficient to satisfy the debt claimed, state particulars of any other properties or assets owned by any of the defendants, if any; and

(c) if the estimated value of such other assets is not sufficient to recover the debt, seek an order directing the defendant to disclose to the Tribunal particulars of other properties or assets owned by the defendants.”;

(v) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) On receipt of application under sub-section (1) or sub-section (2), the Tribunal shall issue summons with following directions to the defendant—

(i) to show cause within thirty days of the service of summons as to why relief prayed for should not be granted;

(ii) direct the defendant to disclose particulars of properties or assets other than properties and assets specified by the applicant under clauses (a) and (b) of sub-section (3A); and

(iii) to restrain the defendant from dealing with or disposing of such assets and properties disclosed under clause (c) of sub-section (3A) pending the hearing and disposal of the application for attachment of properties.”;

(vi) after sub-section (4), the following sub-section shall be inserted namely:—

4 of 1882.

“(4A) Notwithstanding anything contained in section 65A of the Transfer of Property Act, 1882, the defendant, on service of summons, shall not transfer by way of sale, lease or otherwise except in the ordinary course of his business any of the assets over which security interest is created and other properties and assets specified or disclosed under sub-section (3A), without the prior approval of the Tribunal:

Provided that the Tribunal shall not grant such approval without giving notice to the applicant bank or financial institution to show cause as to why approval prayed for should not be granted:

Provided further that defendant shall be liable to account for the sale proceeds realised by sale of secured assets in the ordinary course of business and deposit such sale proceeds in the account maintained with the bank or financial institution holding security interest over such assets.”;

(vii) for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) (1) the defendant shall within a period of thirty days from the date of service of summons, present a written statement of his defence including claim for set-off under sub-section (6) or a counter-claim under sub-section (8), if any, and such written statement shall be accompanied with original documents or true copies thereof with the leave of the Tribunal, relied on by the defendant in his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, the Presiding Officer may, in exceptional cases and in special circumstances to be recorded in writing, extend the said period by such further period not exceeding fifteen days to file the written statement of his defence;

(ii) where the defendant makes a disclosure of any property or asset pursuant to orders passed by the Tribunal, the provisions of sub-section (4A) of this section shall apply to such property or asset;

(iii) in case of non-compliance of any order made under clause (ii) of sub-section (4), the Presiding Officer may, by an order, direct that the person or officer who is in default, be detained in civil prison for a term not exceeding three months unless in the meantime the Presiding Officer directs his release:

Provided that the Presiding Officer shall not pass an order under this clause without giving an opportunity of being heard to such person or officer.

Explanation.—For the purpose of this section, the expression ‘officer who is in default’ shall mean such officer as defined in clause (60) of section 2 of the Companies Act, 2013.”;

(viii) for sub-section (5A), the following sub-section shall be substituted namely:—

“(5A) On receipt of the written statement of defendant or on expiry of time granted by the Tribunal to file the written statement, the Tribunal shall fix a date of hearing for admission or denial of documents produced by the parties to the proceedings and also for continuation or vacation of the interim order passed under sub-section (4).

(5B) Where a defendant makes an admission of the full or part of the amount of debt due to a bank or financial institution, the Tribunal shall order such defendant to pay the amount, to the extent of the admission within a period of thirty days from the date of such order failing which the Tribunal may issue a certificate in accordance with the provisions of sub-section (22) to the extent of the amount of debt due admitted by the defendant.”;

(ix) in sub-section (6), after the words “the debt sought to be set-off, the words “the debt sought to be set-off along with original documents and other evidence relied on in support of claim of set-off in relation to any ascertained sum of money, against the applicant” shall be substituted;

(x) in sub-section (10), for the words “as may be fixed by the Tribunal”, the words “as may be prescribed” shall be substituted;

(xi) after sub-section (10), the following sub-sections shall be inserted, namely:—

“(10A) Every application under sub-section (3) or written statement of defendant under sub-section (5) or claim of set-off under sub-section (6) or a counter-claim under sub-section (8) by the defendant, or written statement by the applicant in reply to the counter-claim, under sub-section (10) or any other pleading whatsoever, shall be supported by an affidavit sworn in by the applicant or defendant verifying all the facts and pleadings, the statements pleading documents and other documentary evidence annexed to the application or written statement or reply to set-off or counter-claim, as the case may be:

Provided that if there is any evidence of witnesses to be led by any party, the affidavits of such witnesses shall be filed simultaneously by the party with the application or written statement or replies filed under sub-section (10A).

(10B) If any of the facts or pleadings in the application or written statement are not verified in the manner provided under sub-section (10A), a party to the proceedings shall not be allowed to rely on such facts or pleadings as evidence or any of the matters set out therein.”;

(xii) for sub-section (11), the following sub-section shall be substituted, namely:—

“(11) Where a defendant sets up a counter-claim in the written statement and in reply to such claim the applicant contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent action, the Tribunal shall decide such issue along with the claim of the applicant for recovery of the debt.”;

(xiii) sub-section (12) shall be omitted.

(xiv) in sub-section (13) (A), for the words “the Tribunal is satisfied by affidavit or otherwise”, the words “the Tribunal on an application made by the applicant along with particulars of property to be attached and estimated value thereof, or otherwise is satisfied” shall be substituted.”;

(xv) sub-section (14) shall be omitted.

(xvi) in sub-section (15), for the word bracket and figure “sub-section (14)”, the word bracket and figure “sub-section (13)” shall be substituted.

(xvii) for sub-section (19), the following sub-section shall be substituted namely:—

18 of 2013. “(19) Where a certificate of recovery is issued against a company as defined under the Companies Act, 2013 and such company is under liquidation, the Tribunal may by an order direct that the sale proceeds of secured assets of such company be distributed in the same manner as provided in section 326 of the Companies Act, 2013 or under any other law for the time being in force.”;

(xviii) for sub-section (20), the following sub-section shall be substituted, namely:—

“(20) The Tribunal may, after giving the applicant and the defendant, an opportunity of being heard, in respect of all claims, set-off or counter-claim, if any, and interest on such claims, within thirty days from the date of conclusion of the hearings, pass interim or final order as it deems fit which may include order for payment of interest from the date on which payment of the amount is found due up to the date of realisation or actual payment.”;

(xix) after sub-section (20A), the following sub-sections shall be inserted, namely:—

“(20AA) While passing the final order under sub-section (20), the Tribunal shall clearly specify the assets of the borrower over which security interest is created in favour of any bank or financial institution and direct the Recovery Officers to distribute the sale proceeds of such assets as provided in sub-section (20AB).

(20AB) Notwithstanding anything to the contrary contained in any law for the time being in force, the proceeds from sale of secured assets shall be distributed in the following orders of priority, namely:—

(i) the costs incurred for preservation and protection of secured assets, the costs of valuation, public notice for possession and auction and other expenses for sale of assets shall be paid in full;

(ii) debts owed to the bank or financial institution.

Explanation.—For the purposes of this sub section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where insolvency and bankruptcy proceedings are pending in respect of secured assets of the borrower, the distribution of proceeds from sale of secured assets shall be subject to the order of priority as provided in that Code.”.

31 of 2016.

(xx) for sub-section (21), the following sub-section shall be substituted, namely:—

“(21) (i) The Tribunal shall send a copy of its final order and the recovery certificate, to the applicant and defendant.

(ii) The applicant and the defendant may obtain copy of any order passed by the Tribunal on payment on such fee as may be prescribed.”;

(xxi) for sub-section (22), the following sub-section shall be substituted, namely:—

“(22) The Presiding Officer shall issue a certificate of recovery along with the final order, under sub-section (20), for payment of debt with interest under his signature to the Recovery Officer for recovery of the amount of debt specified in the certificate.”;

(xxii) after sub-section (22), the following sub-section shall be inserted, namely:—

“(22A) Any recovery certificate issued by the Presiding Officer under sub-section (22) shall be deemed to be decree or order of the Court for the purposes of initiation of winding up proceedings against a company registered under the Companies Act, 2013 or Limited Liability Partnership registered under the Limited Liability Partnership Act, 2008 or insolvency proceedings against any individual or partnership firm under any law for the time being in force, as the case may be.”;

18 of 2013.

9 of 2008.

(xxiii) in sub-section (24), for the words “endeavour shall be made by it”, the following words “every effort shall be made by it to complete the proceedings in two hearings, and” shall be substituted.

Insertion of new section 19A.

33. After section 19 of the principal Act, the following sections shall be inserted, namely:—

Filing of recovery applications, documents and written statements in electronic form.

“19A. (1) Notwithstanding anything to the contrary contained in this Act, and without prejudice to the provisions contained in section 6 of the Information Technology Act, 2000, the Central Government may by rules provide that from such date and before such Tribunal and Appellate Tribunal, as may be notified,—

21 of 2000

(a) application or written statement or any other pleadings and the documents to be annexed thereto required to be filed shall be submitted in the electronic form and authenticated with digital signature of the applicant, defendant or any other petitioner in such form and manner as may be prescribed;

(b) any summons, notice or communication or intimation as may be required to be served or delivered under this Act, may be served or delivered by transmission of pleadings and documents by electronic form and authenticated in such manner as may be prescribed.

(2) Any interim or final order passed by the Tribunal or Appellate Tribunal displayed on the website of such Tribunal or Appellate Tribunal shall be deemed to be a public notice of such order and transmission of such order by electronic mail to the registered address of the parties to the proceeding shall be deemed to be served on such party.

(3) The Central Government may by rules provide that the electronic form for the purpose specified in this section shall be exclusive, or in the alternative or in addition to the physical form, therefor.

(4) The Tribunal or the Appellate Tribunal notified under sub-section (1), for the purpose of adopting electronic filing, shall maintain its own website or common website with other Tribunals and Appellate Tribunal or such other universally accessible repositories of electronic information and ensure that all orders or directions issued by the Tribunal or Appellate Tribunal are displayed on the website of the Tribunal or Appellate Tribunal, in such manner as may be prescribed.

Explanation.—For the purpose of this section,—

21 of 2000. (a) ‘digital signature’ means the digital signature as defined under clause (p) of section 2 of the Information Technology Act, 2000;

21 of 2000. (b) ‘electronic form’ with reference to an information or a document means the electronic form as defined under clause (r) of section 2 of the Information Technology Act, 2000.”.

34. In the principal Act, in section 20 in sub-section (3), for the words “forty-five days”, at both the places where they occur, the words “thirty days” shall be substituted.

Amendment of section 20.

35. In the principal Act, in section 21,—

Amendment of section 21.

(i) for the words “seventy-five per cent.”, the words “fifty per cent.” shall be substituted;

(ii) in the proviso, for the words “waive or reduce the amount”, the words “reduce the amount to be deposited by such amount which shall not be less than twenty-five per cent, of the amount of such debt so due” shall be substituted.

36. In the principal Act, in section 22, after sub-section (3), the following sub-section shall be inserted, namely:—

Amendment of section 22.

18 of 1891. “(4) For the purpose of proof of any entry in the ‘bankers books’, the provisions of the Bankers’ Books Evidence Act, 1891 shall apply to all the proceedings before the Tribunal or Appellate Tribunal.”.

37. In the principal Act, after section 22, the following section shall be inserted, namely:—

Insertion of new section 22A.

“22A. The Central government may, for the purpose of this Act, by rules, lay down uniform procedure consistent with the provisions of this Act for conducting the proceedings before the Tribunals and Appellate Tribunals.”.

Uniform procedure for conduct of proceedings.

Amendment of section 25.

38. In the principal Act, in section 25,—

(i) after clause (a), the following clause shall be inserted, namely:—

“(aa) taking possession of property over which security interest is created or any other property of the defendant and appointing receiver for such property and to sell the same;”.

(ii) after clause (c), the following clause shall be inserted, namely:—

“(d) any other mode of recovery as may be prescribed by the Central Government.”.

Amendment of
section 27.

39. In the principal Act, in section 27, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the Presiding Officer, may by an order, grant time for payment of the amount, provided the defendant makes a down payment of not less than twenty-five per cent, of the amount specified in the recovery certificate and gives an unconditional undertaking to pay the balance within a reasonable time, which is acceptable to the applicant bank or financial institution holding recovery certificate.

(1A) The Recovery Officer shall, after receipt of the order passed under sub-section (1), stay the proceedings until the expiry of the time so granted.

(1B) Where defendant agrees to pay the amount specified in the Recovery Certificate and proceeding are stayed by the Recovery Officer, the defendant shall forfeit right to file appeal against the orders of the Tribunal.

(1C) Where the defendant commits any default in payment of the amount under sub-section (1), the stay of recovery proceedings shall stand withdrawn and the Recovery Officer shall take steps for recovery of remaining amount of debt due and payable.”.

Insertion of new
section 30A.

40. In the principal Act, after section 30, the following section shall be inserted, namely:—

Deposit of amount
of debt due for filing
appeal against
orders of the
Recovery Officer.

“30A. Where an appeal is preferred against any order of the Recovery Officer, under section 30, by any person from whom the amount of debt is due to a bank or financial institution or consortium of banks or financial institutions, such appeal shall not be entertained by the Tribunal unless such person has deposited with the Tribunal fifty per cent, of the amount of debt due as determined by the Tribunal.”.

Insertion of new
section 31B.

41. In the principal Act, after section 31 A, the following section shall be inserted, namely:—

Priority to secured
creditors

“31B. Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.

Explanation.—For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.”.

31 of 2016.

42. In the principal Act, in section 36, in sub-section (2),—

(i) clause (a) shall be numbered as clause (aa) and before clause (aa) as so renumbered, the following clause shall be inserted, namely:—

“(a) other business or commercial rights of similar nature under clause (jb) of section 2;”;

Amendment of
section 36.

(ii) after clause (c), the following clause shall be inserted, namely:—

“(ca) the form of application and the fee for filing application under sub-section (3) of section 19;”;

(iii) in clause (cc), for the brackets, figure and letter “(3A)”, the brackets, figure and letter “(3B)” shall be substituted;

(iv) after clause (cc), the following clauses shall be inserted, namely:—

“(cca) the period for filing written statement under sub-section (10) of section 19;

(ccb) the fee for obtaining copy of the order of the Tribunal under sub-section (21) of section 19;

(ccc) the form and manner of authenticating digital signature under clause (a), and the manner of authenticating service or delivery of pleadings and documents under clause (b), of sub-section (1) of section 19A;

(ccd) the form and manner of filing application and other documents in the electronic form under sub-section (1) and manner of display of orders of the Tribunal and Appellate Tribunal under sub-section (4) of section 19A;”;

(v) after clause (d), the following clauses shall be inserted, namely:—

“(da) the rules of uniform procedure for conducting the proceedings before the Tribunals and Appellate Tribunals under section 22A;

(db) the other mode of recovery under clause (d) of section 25;”.

43. The Indian Stamp Act, 1899 shall be amended in the manner specified in the First Schedule.

Amendment of
Act 2 of 1899

44. The Depositories Act, 1996 shall be amended in the manner specified in the Second Schedule.

Amendment of
Act 22 of 1996.

THE FIRST SCHEDULE

(See section 43)

AMENDMENT TO THE INDIAN STAMP ACT, 1899

(2 OF 1899)

After section 8E, the following section shall be inserted, namely:—

Agreement or document for transfer or assignment of rights or interest in financial assets not liable to stamp duty.

“8F. Notwithstanding anything contained in this Act or any other law for the time being in force, any agreement or other document for transfer or assignment of rights or interest in financial assets of banks or financial institutions under section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in favour of any asset reconstruction company, as defined in clause (ba) of sub-section (1) of section 2 of that Act, shall not be liable to duty under this Act”.

54 of 2002.

THE SECOND SCHEDULE

(See section 44)

AMENDMENT TO THE DEPOSITORIES ACT, 1996

(22 OF 1996)

In section 7, after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) Every depository on receipt of intimation from a participant register any transfer of security in favour of an asset reconstruction company as defined in clause (ba) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 along with or consequent upon transfer or assignment of financial asset of any bank or financial institution under sub-section (1) of section 5 of that Act.

54 of 2002.

(1B) Every depository, on receipt of intimation from a participant, register any issue of new shares in favour of any bank or financial institution or asset reconstruction company or any other assignee of such bank or financial institution or asset reconstruction company, as the case may be, by conversion of part of their debt into shares pursuant to reconstruction of debts of the company agreed between the company and the bank or financial institution or asset reconstruction company.

Explanation.—For the purpose of this section, the expressions “asset reconstruction company”, “bank”, and “financial institution” shall have the meanings assigned to them respectively under clauses (ba), (c) and (m) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.”.

54 of 2002.

THE CONSTITUTION (ONE HUNDRED AND FIRST
AMENDMENT ACT, 2016

An

Act

further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows :-

1. (1) This Act may be called the Constitution (One Hundred and First Amendment) Act, 2016.

Short title and
commencement.

(2) It Shall come into force such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

2. After article 246 of the Constitution, the following article shall be inserted, namely :-

Insertion of new
article 246A.

“246A. (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislative of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

Special provision
with respect to
goods and
services tax.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.”.

Amendment of
article 248.

3. In article 248 of the Constitution, in clause (1), for the word “Parliament”, the words, figures and letter “Subject to article 246A, Parliament” shall be substituted.

Amendment of
article 249.

4. In article 249 of the Constitution, in clause (1), after the words “with respect to”, the words, figures and letter “goods and services tax provided under article 246A or” shall be inserted.

Amendment of
article 250.

5. In article 250 of the Constitution, in clause (1), after the words “with respect to”, the words, figures and letter “goods and services tax provided under article 246A or” shall be inserted.

Amendment of
article 268.

6. In article 268 of the Constitution, in clause (1), the words “and such duties of excise on medicinal and toilet preparations” shall be omitted.

Omission of
article 268A.

7. Article 268A of the Constitution, as inserted by section 2 of the Constitution (Eighty-eighth Amendment) Act, 2003 shall be omitted.

Amendment of
article 269.

8. In article 269 of the Constitution, in clause (1), after the words “consignment of goods”, the words, figures and letter “except as provided in article 269A” shall be inserted.

Insertion of new article 269A.

Levy and collection of goods and services tax in course of inter-State trade or commerce.

9. After article 269 of the Constitution, the following article shall be inserted, namely:—

“269 A. (1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Explanation.—For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

(2) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.

(3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under article 246A, such amount shall not form part of the Consolidated Fund of India.

(4) Where an amount collected as tax levied by a State under article 246A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.

(5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.”.

Amendment of article 270.

10. In article 270 of the Constitution,—

(i) in clause (1), for the words, figures and letter “articles 268, 268A and 269”, the words, figures and letter “articles 268, 269 and 269A” shall be substituted;

(ii) after clause (1), the following clauses shall be inserted, namely:—

“(1 A) The tax collected by the Union under clause (1) of article 246A shall also be distributed between the Union and the States in the manner provided in clause (2).

(1B) The tax levied and collected by the Union under clause (2) of article 246A and article 269A, which has been used for payment of the tax levied by the Union under clause (1) of article 246A, and the amount apportioned to the Union under clause (1) of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2).”.

Amendment of article 271.

11. In article 271 of the Constitution, after the words “in those articles”, the words, figures and letter “except the goods and services tax under article 246A,” shall be inserted.

12. After article 279 of the Constitution, the following article shall be inserted, namely:—

“279A. (1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and First Amendment) Act, 2016, by order, constitute a Council to be called the Goods and Services Tax Council.

Insertion of new article 279A.

Goods and Services Tax Council.

(2) The Goods and Services Tax Council shall consist of the following members, namely:—

(a) the Union Finance Minister..... Chairperson;

(b) the Union Minister of State in charge of Revenue or Finance..... Member;

(c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government.....Members.

(3) The Members of the Goods and Services Tax Council referred to in sub-clause (c) of clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.

(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on—

(a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;

(b) the goods and services that may be subjected to, or exempted from the goods and services tax;

(c) model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under article 269A and the principles that govern the place of supply;

(d) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;

(e) the rates including floor rates with bands of goods and services tax;

(f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;

(g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and

(h) any other matter relating to the goods and services tax, as the Council may decide.

(5) The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

(6) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

(7) One-half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings.

(8) The Goods and Services Tax Council shall determine the procedure in the performance of its functions.

(9) Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:—

(a) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and

(b) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.

(10) No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of—

(a) any vacancy in, or any defect in, the constitution of the Council; or

(b) any defect in the appointment of a person as a Member of the Council; or

(c) any procedural irregularity of the Council not affecting the merits of the case.

(11) The Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute —

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other side; or

(c) between two or more States,

arising out of the recommendations of the Council or implementation thereof.”.

Amendment of
article 286.

13. In article 286 of the Constitution,—

(i) in clause (1),—

(A) for the words “the sale or purchase of goods where such sale or purchase takes place”, the words “the supply of goods or of services or both, where such supply takes place” shall be substituted;

(B) in sub-clause (b), for the word “goods”, at both the places where it occurs, the words “goods or services or both” shall be substituted;

(ii) in clause (2), for the words “sale or purchase of goods takes place”, the words “supply of goods or of services or both” shall be substituted;

(iii) clause (3) shall be omitted.

Amendment of
article 366.

14. In article 366 of the Constitution,—

(i) after clause (12), the following clause shall be inserted, namely:—

‘(12A) “goods and services tax” means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption;’;

(ii) after clause (26), the following clauses shall be inserted, namely:— ‘(26A) “Services” means anything other than goods;

(26B) “State” with reference to articles 246A, 268, 269, 269 A and article 279 A includes a Union territory with Legislature;’.

Amendment of
article 368.

15. In article 368 of the Constitution, in clause (2), in the proviso, in clause (a), for the words and figures “article 162 or article 241”, the words, figures and letter “article 162, article 241 or article 279A” shall be substituted.

Amendment of
Sixth Schedule.

16. In the Sixth Schedule to the Constitution, in paragraph 8, in subparagraph (3),— (i) in clause (c), the word “and” occurring at the end shall be omitted; (ii) in clause (d), the word “and” shall be inserted at the end;

(iii) after clause (d), the following clause shall be inserted, namely:—

“(e) taxes on entertainment and amusements.”.

17. In the Seventh Schedule to the Constitution,—

Amendment of
Seventh
Schedule.

(a) in List I—Union List,—

(i) for entry 84, the following entry shall be substituted, namely:—

“84. Duties of excise on the following goods manufactured or produced in India, namely:—

(a) petroleum crude;

(b) high speed diesel;

(c) motor spirit (commonly known as petrol);

(d) natural gas;

(e) aviation turbine fuel; and

(f) tobacco and tobacco products.”;

(ii) entries 92 and 92C shall be omitted;

(b) in List II—State List,—

(i) entry 52 shall be omitted;

(ii) for entry 54, the following entry shall be substituted, namely:—

“54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.”;

(iii) entry 55 shall be omitted;

(iv) for entry 62, the following entry shall be substituted, namely:—

“62. Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.”.

18. Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years.

Compensation to States for loss of revenue on account of introduction of goods and services tax.

19. Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier.

Transitional provisions.

20. (1) If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of assent of the President to this Act to the provisions of the Constitution as amended by this Act), the President may, by order, make such provisions, including any adaptation or modification of any provision of the Constitution as amended by this Act or law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty:

Power of President to remove difficulties.

Provided that no such order shall be made after the expiry of three years from the date of such assent.

(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

THE TAXATION LAWS
(AMENDMENT) ACT, 2016

An

Act

*further to amend the Income Tax Act, 1961 and the Customs Tariff Act,
1975.*

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows :

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Taxation Laws (Amendment) Act, 2016.

Short title and
commencement.

(2) Save as otherwise provided in this Act, it shall come into force at once.

CHAPTER II

DIRECT TAX

Income-Tax

43 of 1961.

2. In the Income-tax Act, 1961 (hereinafter referred to as the principal Act in this Chapter), in section 2, in clause (19AA), after *Explanation 4*, the following *Explanation* shall be inserted, with effect from the 1st day of April, 2017, namely :-

Amendment of
section 2.

“Explanation 5.—For the purposes of this clause, the reconstruction or splitting up of a company, which ceased to be a public sector company as a result of transfer of its shares by the Central Government, into separate companies, shall be deemed to be a demerger, if such reconstruction or splitting up has been made to give effect to any condition attached to the said transfer of shares and also fulfils such other conditions as may be notified by the Central Government in the Official Gazette.”.

Amendment of
section 80JJAA

3. In the principal Act, in section 80JJAA, in sub-section (2) in the *Explanation*, after clause (ii), the following proviso shall be inserted, with effect from the 1st day of April, 2017, namely :-

‘Provided that in the case of an assessee who is engaged in the business of manufacturing of apparel, the provisions of sub-clause (c) shall have effect as if the words “two hundred and forty days”, the words “one hundred and fifty days” had been substituted.’

CHAPTER III

INDIRECT TAX

Custom tariff

Amendment of
First Schedule.

4. In the Custom Tariff Act, 1975, in the First Schedule,—

51 of 1975.

(a) In Chapter 25 for the entry “10%” in column (4) occurring against tariff items 25151100, 25151210, 25151220, 25151290, 25161100 and 25161200, the entry “40%” shall respectively be substituted;

(b) In Chapter 68, for the entry “10%” in column (4) occurring against tariff items 68021000, 68022110, 68022120, 68022190, 68022310, 68022390, 68022900, 68029100, 68029200 and 68029300, the entry “40%” shall respectively be substituted.

L. L. SHANGPLIANG,

Deputy Secretary to the Govt. of Meghalaya,
Law (B) Department.